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Commission on Freedom of Information and Individual Privacy

Government Secrecy, Individual Privacy and the Public's Right to Know: an Overview of the Ontario Law



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GOVERNMENT SECRECY, INDIVIDUAL PRIVACY
AND THE PUBLIC'S RIGHT TO KNOW:
AN OVERVIEW OF THE ONTARIO LAW

by Timothy G. Brown

Research Publication 11

Prepared for the
Commission on Freedom of Information
and Individual Privacy

November, 1979



(iii)

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FOREWORD

The Commission on Freedom of Information and Individual Privacy was established by the government of Ontario in March, 1977, to "study and report to the Attorney General of Ontario on ways and means to improve the public information policies and relevant legislation and procedures of the government of Ontario, and to examine:

1. Public information practices of other jurisdictions in order to consider possible changes which are compatible with the parliamentary traditions of the government of Ontario and complementary to the mechanisms that presently exist for the protection of the rights of individuals;
2. The individual's right of access and appeal in relation to the use of government information;
3. The categories of government information which should be treated as confidential in order to protect the public interest;
4. The effectiveness of present procedures for the dissemination of government information to the public;
5. The protection of individual privacy and the right of recourse in regard to the use of government records."

To the best of our knowledge it is the only Commission of its kind whose mandate embraces both freedom of information and individual privacy. The views of the public were embodied in the briefs submitted and in the series of hearings held in ten communities, and covering both Northern and Southern Ontario. In response to public demand, three sets of hearings, widely separated in time, were held in Toronto.

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The views of the scholars and experts in the field are to be found in the present series of research reports of which this is number 11. These, together with the briefs submitted, constitute the backbone of our findings: the stuff out of which our Report will be made. Many of these stand in their own right as documents of importance to this field of study; hence our decision to publish them immediately.

It is our confident expectation that they will be received by the interested public with the same interest and enthusiasm they generated in us. Many tackle problem areas never before explored in the context of freedom of information and individual privacy in Canada. Many turn up facts, acts, policies and procedures hitherto unknown to the general public.

In short, we feel that the Commission has done itself and the province a good turn by having these matters looked into and that we therefore have an obligation in the name of freedom of information to make them available to all who care to read them.

It goes without saying that the views expressed are those of the authors concerned; none of whom speak for the Commission.

D. C. Williams
Chairman

PREFACE

The Commission resolved at an early stage of its deliberations that any recommendations it would make would be grounded on a thorough understanding of the existing framework of Ontario law relating to three subjects of obvious relevance to the Commission's mandate: the law pertaining to government secrecy, the law conferring a public right of access to government documents, and the law protecting individual privacy with respect to government files containing personal information.

Mr. Brown and his research assistants were assigned the task of furnishing the Commission with an authoritative account of the laws of Ontario relating to these subjects. The task appeared to be a relatively straightforward one. The general assumption concerning these subjects is that there is very little law relating to them. The legal framework of government secrecy is often stated to be constituted by the doctrine of Crown privilege and by the law requiring an oath of secrecy to be taken by members of the public service. Further, it is generally assumed that there is little law relating to the other two subjects, i.e., that there are no legal mechanisms securing public access to government information, or protecting the public from invasions of privacy through the handling of personal information by the government.

As Mr. Brown's paper indicates, however, the reality is much more complex. There is, in fact, an enormous amount of provincial law relating to these subjects, some of it quite subtle and complex. In many situations, the applicable legal rules can only be discovered through a painstaking examination of a number of common law doctrines, together with a vast array of statutory provisions sprinkled throughout the statute law of the province of Ontario.

The present paper serves a useful function insofar as it demonstrates -- indeed, exhaustively demonstrates -- the inadequacies of the existing law in these areas. In each of the subject areas under examination there is, as Mr. Brown argues, evidence of a failure to develop a consistent philosophy or approach to fundamental questions concerning the interrelationship of the competing demands of confidentiality and publicity.

An additional purpose served by the paper is to offer a description of the legal background against which any legislative proposals recommended by the Commission would have to operate. To choose but one example, any legislated freedom of information access scheme would have to take into account the considerable number of existing "statutory secrecy provisions" uncovered by Mr. Brown in the course

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of his research. Should such provisions be allowed to subsist with a freedom of information act? Is the solution proposed by the Canadian Bar Association -- wholesale repeal of these provisions -- a workable one? Or should a distinction be drawn between those provisions which are consistent with the freedom of information act philosophy and those which are not, with the former being allowed to survive? Mr. Brown provides an informative account of the broad range of provisions of this kind currently in force as well as a discussion of the solutions to this problem adopted in other freedom of information act schemes.

The author, T.G. Brown, a graduate of the Faculty of Law of Queen's University, is a member of the Ontario Bar and is currently engaged in the practice of law in Toronto. Mr. Brown was assisted in the preparation of this paper by a number of law students hired as summer research assistants. Mark Sandler of the Faculty of Law of the University of Toronto did much of the work involved in reviewing the statutes of Ontario. Victoria Alexander, John Dow, Robert Cooper and Dennis Kaye, also law students at the University of Toronto, assisted in this phase of the research. Michael Riley and Neil Boyd, both students at the Osgoode Hall Law School of York University, and Wayne Morris, a University of Toronto law student, assisted in researching many areas of substantive law which are discussed in the body of the paper.

The Commission has resolved to make available to the public its background research papers in the hope that they might stimulate public discussion. Those who wish to communicate their views in writing to the Commission are invited to write us at the following address:

Registrar
Commission on Freedom of Information
and Individual Privacy
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It should be emphasized, however, that the views expressed in this paper are those of the author and that they deal with questions on which the Commission has not yet reached a final decision.

Particulars of other research papers which have been published to date by the Commission are to be found on pages 340-341.

John D. McCamus
Director of Research

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CHAPTER I

INTRODUCTION

A. Terms of Reference

Order-in-Council 920/77 of March 30, 1977, established the Commission on Freedom of Information and Individual Privacy. The preamble to the order stated that "the government wishes to improve public information policies and relevant legislation and procedures of the government of Ontario while protecting the rights of individuals to personal privacy." Included in the Commission's terms of reference are the following:

- . The individual's right of access and appeal in relation to the use of government information
- . The protection of individual privacy and the right of recourse in regard to the use of government records.

B. Objectives of this Paper

The principal objective of this paper is to assist the Commission in its deliberations by providing an overview of the existing law of Ontario, as it relates to:

- a) secrecy of government information

- b) public access to government information
- c) individual privacy and the disclosure of government information.

C. Nature of Research

Our research has indicated that no previous examination of this nature has been carried out regarding the law of Ontario.

The law relating to access to and secrecy of government information is scattered throughout the statutes, regulations and common law of the province. It has developed in an ad hoc fashion, and not as a result of any established general policy.

The research involved in preparing this paper has therefore necessarily ranged over a disparate collection of material, from recently enacted statutes such as The Environmental Assessment Act to medieval procedural devices such as the ancient prerogative writ of mandamus. Entire texts and treatises have been devoted to many of the areas of law that were considered. Of course, the nature of an overview is such that not all of this scholarly work can be reflected in this paper. In many instances, footnote references are given to indicate sources where the law in a particular area is considered in more detail. This is especially the case, for example, in the section dealing with the procedural complexities of suing the government.

In many of the areas discussed, the state of the law is uncertain, and no firm conclusions could be reached. This is particularly true in the areas concerning public access to government information and the rights of individuals relating to information about themselves contained in government files. In the breach of confidence field, for example, it is not possible to state conclusively the extent of governmental liability since there have apparently been no reported cases of the government being sued on this basis.

The common law accords parliamentary government special treatment not enjoyed by individual or corporate citizens. This stems in part from recognition of certain traditional rights and prerogatives of the Crown, which continue to be vested in the Ontario government. Many statutes also grant the government or its representatives special powers or privileges. The implications of this unique legal status were explored in relation to the control of and access to government-held information.

Much of the research for this paper related to the statute law of Ontario. This emphasis was required as a result of the very nature of "government" in Ontario. Virtually every activity of the provincial government is carried on under the authority of, or in the course of administering, some statute.

While this paper is not intended to be a comparative work, some reference is made to the experience of other jurisdictions, particularly

regarding the relationship of statutory secrecy provisions and freedom of information schemes.

It should be noted that this paper was prepared for the purpose of presenting an overview of existing Ontario law. Particular aspects of the law are dealt with in some detail by other projects. Both municipal law and administrative law, for example, have been studied in other papers prepared for the Commission.¹

D. Structure and Organization of the Paper

The body of the paper is comprised of three major chapters:

- . Chapter II: Secrecy of Government Information
- . Chapter III: Access to Government Information
- . Chapter IV: Individual Privacy and Disclosure of Government Information.

In Chapter II, we shall see that the government of Ontario has very extensive legal rights and powers to keep information secret. As the law now stands, no general right of access to government information exists. In the absence of such a public right, the government has a

1 See S. Makuch and J. Jackson, Freedom of Information in Local Government in Ontario (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication 7, 1979) and L. Fox, Freedom of Information and the Administrative Process (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication 10, 1979).

practical ability to maintain secrecy which is even greater than its particular express legal rights. The government may simply refuse to release information and rely on the fact that a member of the public has no legal mechanism available to force disclosure. The chapter examines the oaths of secrecy taken by government employees and appointees, the various statutes providing for government secrecy and the law (both statute and common) which allows government to withhold information from court proceedings. In the discussion of statutory secrecy a brief but perhaps significant section deals with regulations made by Cabinet.

By way of contrast to the legal ability of government to keep information secret, Chapter III deals with the very limited legal rights of members of the general public and other bodies to gain access to information in government files. The procedural and technical difficulties involved in enforcing legal rights of access are considered. In practice, it would appear that a citizen's ability to force information disclosure by government is almost nonexistent.

Chapter IV deals with a particular aspect of disclosure of government information. It focuses on the possible invasions of privacy which might occur if the government were to make information about individuals available to the public. Privacy as it relates to law has been the subject of increased attention by legal writers in the past few years. The specific issue of privacy invasion by the release of government-held information has not been dealt with to any great extent. Part

of Chapter IV shows that this problem is indeed unique. Even those aspects of the common law which might be used as privacy protection devices in the government disclosure context have not been developed. Common law actions such as breach of confidence are examined as possible privacy protection mechanisms, and some of the difficulties involved in suing the government are explored. It will be seen that in practical terms the common law offers little in the way of effective protection.

Next, the statutory secrecy provisions are considered. These statute sections provide the clearest possibility for legal protection from privacy invasions resulting from disclosure of government information. Once again, however, the government's special legal status places obstacles in the way of effective enforcement of what are apparently legal rights.

Suing the government for any tort is a difficult exercise. A comment about the present legal status of the tort of invasion of privacy and its appropriateness for use in the government disclosure context is included at the end of Chapter IV.

The overriding aspect of Ontario law dealt with in this paper is the present legal ability of the Ontario government to keep its information secret, and discussion of this follows in Chapter II.

CHAPTER II

SECRECY OF GOVERNMENT INFORMATION

A. Introduction

Great Britain has an Official Secrets Act which makes it an offence for anyone, including civil servants, to keep, use or communicate government information without authorization.² The 1972 Franks Report called the Act a "mess," and noted that its scope is enormously wide.³ The Report recommended substantial changes to restrict the Act's application. At the federal level in Canada we have an Official Secrets Act,⁴ which is couched in almost exactly the same language as the British Act. Crimes under the Canadian Act are generally punishable by up to 14 years in prison.⁵ These secrecy acts of general application are vague and imprecise. It is not at all clear what type of activity constitutes an offence or what information is to be considered secret.

2 Official Secrets Act, 1911, 1 & 2 Geo. 5, c. 28, s. 2 as amended.

3 Report of the Departmental Committee on Section 2 of the Official Secrets Act, 1911 (Cmd. 5104, 1972) (The Franks Report), p. 37.

4 Official Secrets Act, R.S.C. 1970, c. O-3.

5 Id., s. 15(1).

Ontario does not have any general secrecy legislation or Official Secrets Act. One might assume from this that government information is more accessible under Ontario law than under British or federal Canadian law. Unfortunately, this is not the case. There are many specific aspects of the law of Ontario that either require government employees to maintain secrecy or give the government a legal right to refuse requests for information. The cumulative effect of these various legal provisions is to keep vast amounts of government-held information secret from the public.

The law on government secrecy is scattered throughout the common law and the statutes and regulations of Ontario. This section of the paper will attempt to pull together and examine these disparate areas of Ontario law, with a view to determining the extent of the Ontario government's existing legal rights to control information and withhold it from public disclosure.

Ontario has inherited the British system of parliamentary democracy, and with it, the tradition of administrative secrecy.⁶ In general,

6 Professor Donald Rowat of Carleton University has often commented on the deleterious effects of this administrative secrecy inherited from Britain. Rowat has stated that as a result of this tradition, Canada's governments are among the most secretive in the western world, and he suggests that this practice of secrecy should be reversed in favour of openness, along the lines of the Swedish model. See Rowat's testimony before the Standing Joint Committee on Regulations and Other Statutory Instruments, in Can., Min. of Proceed., 1st Sess., 30th Parl., 1974-75, Feb. 25, 1975, and his
(cont'd)

there is no legal right of access to information held by the Ontario government. These two factors combine to present an immediate and formidable obstacle to obtaining government information. As a general rule, if the Ontario government wishes to keep information secret, there is no law that can be used to force disclosure of the desired information. This gap in our law leaves the government in the position of being able to legally keep almost all of its information secret. To this extent, much of the law dealing directly with government secrecy is redundant.

Quite apart from the lack of law requiring disclosure of government information, the government may point to a number of aspects of Ontario law to justify secrecy. Justification might be found in the oaths of secrecy taken by all Ontario civil servants and some appointed officials; in statutes or regulations which order government personnel to keep information secret; or in the common law regarding principles such as confidentiality, contract and Crown privilege.

The context of an information request and the type of information sought are very important in determining which justification of secrecy might

6 (cont'd)
paper prepared for this Commission, Public Access to Government Documents: A Comparative Perspective (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication 3, 1979). Professor Rowat has also edited a book, Administrative Secrecy in Developed Countries, a comparative work examining the practices in Belgium, Canada, Denmark, Finland, France, Hungary, Norway, Sweden, the United Kingdom, the United States, West Germany and Yugoslavia (Brussels International Institute of Administrative Studies, 1979).

be relied upon by the Ontario government or its civil servants.

Consider the following hypothetical situation:

Facts:

a) Individual [A] complains to the Registrar of Mortgage Brokers in Ontario (a government official) concerning certain business dealings of mortgage broker [X], and some information about [X] is requested. Fraud is suspected.

b) [A] also wishes to sue broker [X], and needs some government-held information to prove his case.

Some Possible Results:

a) If the information sought concerned broker [X]'s financial statements filed with the Registrar, then section 27(4) of The Mortgage Brokers Act⁷ could be used to justify keeping this information secret. This section states that financial statements filed with the Registrar of Mortgage Brokers are confidential.

b) If [A] were to request information concerning other complaints lodged against broker [X], then section 25b of The Mortgage Brokers

7 R.S.O. 1970, c. 278.

Act might come into play. This section states that:

Every person employed in the administration of this Act ...
shall preserve secrecy in respect of all matters that come to
his knowledge in the course of his duties, employment ...
(emphasis added)

8

Some exceptions to absolute secrecy are provided for, but in our example, this section could be used to refuse information about other complaints. In any event, the exceptions to secrecy are phrased in such a way as to leave government the power to decide whether to make information public.

c) If, as a result of [A]'s complaint, an investigation were undertaken by the Registrar into the affairs of broker [X], then [A] would probably want to see the results of the investigation. Unfortunately, section 25b of the Act declares that such investigation reports must not be made public, and [A]'s request could justifiably be refused.

d) If [A] were to request information concerning broker [X]'s character, references or previous convictions for fraud, then the Registrar could claim that the common law regarding confidentiality prevents the disclosure of such information from government files.

e) If [A] were to sue broker [X] and subpoena the government Registrar or his employees to come and give evidence in court, then the civil servants could refuse, and ignore the court subpoena. Section 25b(2) of the Act allows government personnel to refuse to testify in civil lawsuits.

f) If [A] wishes to have the civil servant Registrar testify in court on matters which were outside the particular function of his job as Registrar, but the government did not wish to have the Registrar appear in court, then a claim of Crown privilege might be put forward. Crown privilege, to be discussed infra, is a common law doctrine that permits the government to refuse information to the courts in certain circumstances; for example, where court testimony might reveal advice which was given to the minister by his civil employees. The Registrar's refusal to give information to the courts might be justified in this way.

g) Suppose after all this activity, the Registrar takes no action against broker [X]. The Registrar has apparently investigated [X], spoken to the minister involved, and had meetings with [X]. Any request made by the original complainant [A] for an explanation of what has happened since the filing of his complaint might well be met by a simple refusal of information on the part of the Registrar. As noted above, the Registrar does not have to quote any law to justify his silence. There is apparently no law which [A] can use to force information from the Registrar. Thus the situation could remain. [A]

has asked questions. The government has refused to answer. [A] would apparently have no recourse under present Ontario law.

The above example deals with The Mortgage Brokers Act. This Act was chosen not because of its special secrecy provisions, but rather because the secrecy provisions are completely typical of a great number of acts presently in force in Ontario.⁹ This hypothetical situation demonstrates some of the legal justifications for government secrecy. The following section of the paper will discuss all of these justifications and some others.

The present ability of the Ontario government to withhold information from court proceedings will be discussed. A short note on security classification of documents and a note concerning present international law regarding documents received from foreign countries have been included in this section.

9 For a detailed list of acts and secrecy provisions, see Appendix A, Provisions in the Statutes and Regulations of the Province of Ontario Respecting the Non-Disclosure of Government Information, page 231.

B. Oaths of Secrecy

A number of different oaths of secrecy are required to be taken by various categories of public servants and officials. For the most part, these requirements are embodied in law.¹⁰

1. General Oath of Secrecy

Before an Ontario civil servant can receive any salary, he must take an oath of secrecy in the following form:¹¹

... except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a civil servant. So help me God. (emphasis added)

The Public Service Act requires that the oath be taken, but the oath itself appears to have no legal status. That is, there is no penalty provided by law for breach of the oath. Swearing secrecy seems to place a moral obligation only on the civil servant.

10 The Public Officers Act, R.S.O. 1970, c. 382, s. 4, provides that it is not necessary for public officers to take any oath other than an oath of allegiance to the Crown unless required to do so by law.

11 The Public Service Act, R.S.O. 1970, c. 386, s. 10.

The scope of the oath is extremely broad. A literal interpretation of the oath would not only prevent civil servants from communicating with the public, but would also prevent them from communicating with each other. If the oath were scrupulously adhered to, the effective administration of the Ontario government would be impeded. Highly placed legal officers of the present government have expressed agreement with the above assessment. The Hon. J.C. McRuer has called the oath "a legal absurdity."¹² Research indicates that the oath of secrecy has never been interpreted by a court, nor has it been discussed in any law review articles or law texts.

The Ontario oath is potentially much more far-reaching in its effect than the oath taken by federal government employees. The federal oath reads:¹³

... I will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such employment. So help me God. (emphasis added)

Under the federal oath, "due authority" will allow a federal civil servant to release information to the public without breaching the

12 The Hon. J.C. McRuer, address to the Conference on Law and Contemporary Affairs, University of Toronto, Feb. 3, 1978.

13 Public Service Employment Act, R.S.C. 1970, c. P-32 (Sched. III).

oath of secrecy. The permission of a superior or deputy minister would presumably be "due authority."¹⁴

Present Ontario practice is apparently based on the same premise, that a superior's permission is sufficient to allow release of information by an Ontario civil servant. However, the oath states that a civil servant must be "legally required" to release information. It is difficult to understand how the permission of one civil servant would legally require another civil servant to release information, given the fact that both civil servants have taken the same oath of secrecy. Apart from a statutory duty to release information or a court subpoena, it is not clear how a legal requirement to release information would arise.

It is interesting to note the legislative history of the Ontario oath of secrecy. It was not introduced into the public service legislation until 1947. At that time the oath required civil servants to maintain secrecy unless "legally authorized or required" to disclose information.¹⁵ This formulation presumably allowed civil servants to release information to the public or other civil servants if government

14 In the United Kingdom, civil servants must sign a declaration of acknowledgment indicating their awareness of the provisions of the Official Secrets Act, 1911. This Act allows disclosure of information with due authority. See The Franks Report, supra note 3.

15 The Public Service Act, R.S.O. 1960, c. 331, s. 4(1).

policy allowed disclosure, or if permission of a superior were obtained. In August, 1962 a new Public Service Act¹⁶ was proclaimed in force. This Act changed the oath of secrecy and deleted the reference to "authorized." Civil servants now have to swear themselves to secrecy unless "legally required" to release information. The oath has remained in this ridiculous state.¹⁷

Although no legal sanction such as jail terms or fines exists for breach of the oath,¹⁸ it is apparently within the Ontario government's power to dismiss or demote a civil servant for contraventions of the oath of secrecy. In the course of our research, it was learned that the Civil Service Association apparently interprets the oath to mean that disclosure of information prejudicial to the government or an employee of the government is prohibited. There are apparently no instances of dismissal or demotion for breaches of the oath. This does not reflect possible administrative sanctions such as withholding promotion. Only one documented attempt to dismiss an employee for breach of his oath could be found. This case arose under the old form of the oath of secrecy ("legally authorized or required"). Shortly before the 1962 amendment, a hearing took place at which the board decided that the breach of the oath committed by the affected civil

16 The Public Service Act, S.O. 1961-62, c. 121.

17 The Public Service Act, R.S.O. 1970, c. 386, s. 10.

18 Releasing information might be an offence under particular statutes. Of those statutes with secrecy provisions, 47 make it an offence to contravene any section of the act while there are 18 statutes with offences directly referring to breach of secrecy.

servant was not substantial enough to warrant dismissal.¹⁹ However, the board did not question the proposition that a substantial breach of the oath could be a reason for dismissal.

2. Specific Oaths of Secrecy

In addition to the general public servants' oath, at least 14 Ontario statutes or their regulations provide for oaths of secrecy to be taken by various officials.²⁰ These oaths are to be taken by appointed board members (e.g., the Labour Relations Board) and government employees who are not part of the formal civil service (e.g., employees of the Office of Assembly or Ontario Crown corporations). Without

19 An employee had shown documents concerning himself and his job situation to a Civil Service Association executive in order to get advice about starting a grievance. The civil servant was then notified that he was being dismissed for breach of oath of office and secrecy for showing the documents to the CSA. The board held that on the facts there was not enough of a breach to warrant dismissal since access to one's own records for grievance purposes was an established policy of the Ontario government.

20 The Cancer Remedies Act, R.S.O. 1970, c. 56; The Crown Employees Collective Bargaining Act, 1972, S.O. 1972, c. 67; The Election Act, R.S.O. 1970, c. 142; The Labour Relations Act, R.S.O. 1970, c. 232; The Legal Aid Act, R.S.O. 1970, c. 239; The Legislative Assembly Act, R.S.O. 1970, c. 240; The Ministry of Treasury, Economics and Intergovernmental Affairs Act, 1972, S.O. 1972, c. 3; North Pickering Development Corporation Act, 1974, S.O. 1974, c. 124; The Ombudsman Act, 1975, S.O. 1975, c. 42; The Ontario Land Corporation Act, 1974, S.O. 1974, c. 134; The Private Sanitaria Act, R.S.O. 1970, c. 363; The Statistics Act, R.S.O. 1970, c. 443; The Vital Statistics Act, R.S.O. 1970, c. 483; The Registry Act, R.S.O. 1970, c. 409 (Reg. 777, R.R.O. 1970, forms 2 and 3).

special provisions, these people would not be required to take any oath of secrecy, since The Public Service Act would not normally apply to them.

Some of these oaths are rather vague. For example, one of the more interesting oaths of secrecy is taken by members of the Private Sanitaria Board of Visitors. They swear themselves to absolute secrecy except when required to divulge information by law or "so far as I feel myself called upon to do so for the better execution of the duty imposed upon me by the said Act."²¹

Two Acts require civil servants to take a second oath of secrecy in addition to The Public Service Act oath. The additional oaths relate to The Vital Statistics Act and The Statistics Act information.²²

Members of the Executive Council (the Cabinet) take the following oath of secrecy. This is apparently a traditional requirement and not one laid down in any act or regulation.

You, _____ do sincerely promise and swear that you will serve Her Majesty truly and faithfully, in the place of Her Council in this Her Majesty's Province of Ontario. You will keep close and secret all such matters as shall be treated, debated and resolved in the Executive Council without publishing or disclosing the same or any part thereof by word, writing or any otherwise, to any person out of the same Council, and yet if any matter so

21 The Private Sanitaria Act, R.S.O. 1970, c. 363, s. 3(6).

22 Supra, note 20.

performed, treated and debated in any such Executive Council shall touch any particular person sworn of the same Council upon any such matter as shall in any wise concern his loyalty and fidelity to the Queen's Majesty you will in no wise open the same but keep it secret as you would from any person, until the Queen's Majesty's pleasure be known in that behalf.

You will in all things be moved, treated and debated in any such Executive Council faithfully, honestly and truly declare your mind and opinion to the honour and benefit of the Queen's Majesty and the good of her subjects without partiality or affection of persons in no wise forbearing so to do from any manner of respect, favour, love, need, displeasure or dread of any person or persons whatsoever.

In general you will be vigilant, diligent and circumspect in all your doings touching the Queen's Majesty's affairs.

All which matters and things you will faithfully keep and observe as a good Councillor ought to do to the utmost of your power, will and discretion. So Help You God. 23

In Ontario, oaths of secrecy are relatively new. The general oath was not introduced until 1947. Given the sweeping nature and apparent unenforceability of secrecy oaths, there is some legitimacy to the position that all such oaths should be abolished outright. An oath of office that stipulates compliance with statutory obligations and duties without any specific reference to secrecy could be implemented. Such an oath would impress upon the minds of civil servants that theirs is a position of trust and responsibility. Such an oath might foster an attitude within the public service that employees of the Ontario government have a duty to release information, when required by statute, as well as a duty to suppress it, where required to do so by statute.

23 Reproduced from Schindeler, F.F., Responsible Government in Ontario, (Toronto: University of Toronto Press, 1973) at 274 (Appendix A).

It has been noted by most commentators on government secrecy that the attitude of the civil service must be changed if a "freedom of information" policy is to be effective. At present, the first act of a government employee, after signing his contract, is to take an oath of secrecy. By law, if the oath is not sworn, the employee will not be paid.²⁴ This must surely have an effect on the new employee's attitude. Removing this initial emphasis on secrecy and putting in its place an emphasis on positive responsibility might help change the apparent public service attitude toward the release of government information to the governed.

C. Secrecy in the Statutes of Ontario

1. General Description

In addition to the general tradition of secrecy and the oaths of secrecy, many acts passed by the Ontario legislature contain information access restrictions (there are approximately 124 -- see Appendix A for a complete list and the relevant sections). As Deputy Attorney General Leal noted in his submission to the Commission, there is no demonstrable policy reflected in these provisions. They appear to have

24 The Public Service Act, R.S.O. 1970, c. 386, s. 10.

developed on an ad hoc basis. The majority of these acts make it an offence, punishable on summary conviction, for any civil servant to contravene the secrecy provisions. However, our research disclosed no record of any prosecutions for breaches of secrecy provisions.²⁵

As a result of all these secrecy provisions working together, a staggering amount of government-held information is declared secret by law. For example, in an area of interest to most consumers, all information about government regulation of collection agencies and consumer reporting agencies has been declared secret. Information about the activity of the Consumer Protection Bureau and Business Practices Branch investigations has been declared secret. All information concerning government regulation of medical personnel is secret, including regulation of dentists, nurses, optometrists, pharmacists, and denture therapists. All government information concerning the regulation of the following business activities is secret by law: morticians, mortgage brokers, used car dealers, paperback and periodical distributors, real estate and business brokers, and travel agents. This is only a partial list. A myriad of specific secrecy sections can be found on the statute books of Ontario.

25 See note 18, *supra*. In contrast to the Ontario experience, many prosecutions have taken place under the terms of the Official Secrets Acts in Great Britain and Canada. Because of the broad wording of s. 4 of Canada's Official Secrets Act, it is arguable that it applies to provincial civil servants and information. This would obviously have severe implications relative to any provincial freedom of information legislation. However, in the 1969 Mackenzie Report on Security and the judgment of McDonald, J. in Re Commission of Inquiry Concerning Certain Activities of the RCMP, (1978) 94 D.L.R. (3d) 365, an argument is raised that the words "secret official" in s. 4(1) indicate that the section should apply only to information which is classified as "secret" or "top secret" by the federal government. The issue is apparently unresolved at present.

The typical secrecy provision or standard form section makes it mandatory for every government employee who deals with the administration of the act, to "preserve secrecy with respect to all matters that come to his knowledge in the course of his duties." In certain very restricted cases the government employee is given a discretion to release the information; for example, with the consent of the person to whom the information relates, or if it is necessary for the administration of the act. The civil servant may also release information to his own counsel.

In a number of acts, there are sections requiring limited secrecy, seemingly designed to protect the privacy of those who supply personal or commercial information to the government, such as financial statements (see Appendix C), medical information (see Appendix D), test results of certain products (see Appendix E), or inspection and investigation reports (see Appendix F). Those statutes dealing with revenue collection have secrecy provisions as well (see Appendix G). In the acts dealing with collective agreements and labour relations there are strict secrecy provisions which were apparently enacted to preserve the integrity of the bargaining system when government conciliators and fact-finders get involved (see Appendix H).

There is one general exception to the secrecy enacted by provisions of this kind. In the absence of a statutory bar, civil servants may be subpoenaed to attend and give evidence in court. This is a deviation from the general policy regarding lack of public access to government

information. The justification for compelling civil servants to give information in court is the maintenance of the administration of justice. The Crown's civil servants may claim Crown privilege in certain circumstances and refuse to give evidence, however.²⁶ Further, statutes exist which provide that civil servants are not compellable in court: there are 39 acts which confer such a power to refuse to give evidence in court (see Appendix I). Where evidence is given in court, of course, it is placed in the public domain. The ability of civil servants to refuse to give evidence is a formidable barrier to gaining access to government information, for both the public at large and particularly for litigants.

2. Standard Form Secrecy

The standard form section (for a complete list of these, see Appendix B) was developed in response to the Report on the Inquiry into Civil Rights in Ontario (The McRuer Report).²⁷ It has been inserted in many

26 For a discussion of Crown privilege and a more detailed analysis of statutory non-compellability of civil servants, see the section infra "Withholding Government Information from Court Proceedings."

27 Report #1, Vol. 1, at 458:

It is essential that the use of information and evidence obtained through the exercise of statutory powers of inquiry should be confined to the purpose for which it was obtained and that purpose only ... Statutes authorizing such inquiries should contain adequate safeguards to insure that the information obtained by the exercise of the investigative power is not used for any other purpose.

old statutes by amendment and in many new statutes when drafted. While the protection of individual civil rights is an important end, the legislation used to achieve this protection has resulted in the enactment of serious impediments for public access to a great deal of government information. It is arguable that much of this information could be released without infringing on civil rights. The secrecy provisions now extend to "all matters," including government-commissioned reports and studies, policy development background papers, "administrative" manuals which interpret or define words in legislation determining rights or benefits under various acts,²⁸ and inspection or investigation reports which may be of public interest.

The "standard form" secrecy provision²⁹ requires complete secrecy on the part of civil servants. This is the starting point; typically,

28 See the section on "Secret Law" in L. Fox, op. cit., supra note 1, pp. 177-247.

29 e.g. The Ambulance Act, R.S.O. 1970, c. 20, s. 18(3) as enacted by S.O. 1971, c. 50, s. 5(10)

18(3) Each person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under this section shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

three exceptions are then created. The civil servants administering the act in question are given the discretion to release information in specific circumstances. These exceptions will be looked at later but first, a comment on the general structure.

The secrecy provisions reflect and reinforce the present legal situation regarding information access, i.e. there is no public right to know. Even if one of the exceptions were clearly applicable, there is no legal mechanism for forcing a civil servant to release information, since it remains in the civil servant's discretion to release information or keep it secret. A court may order a civil servant to exercise a discretion, but it will not tell the civil servant how to exercise it. A decision not to release information would be considered an exercise of the discretion and unless some highly unusual circumstances existed, e.g., malice or fraud on the part of the civil servant, the court would have no more to say about the matter. Note that the section requires secrecy with respect to all matters that come to the civil servant's knowledge. This section does not merely restrict the release of documents, but restricts the release of information contained in documents, oral communications, and policy directions.

An argument in favour of retention of these provisions is that individual statutory secrecy provisions reflect a "fine tuning" of the system. This suggestion seems to lose some of its force when the standard form sections are reviewed in detail. It is important to note that these sections do not appear to be individually tailored to deal with the

specific subject matter, relationships and situations covered by the legislation in question. The same language used in The Ambulance Act is found in The Deposits Regulation Act, The Paperback and Periodical Distributor Act, The Motor Vehicle Dealers Act, and The Health Disciplines Act, to name but a few of the disparate areas covered by exactly the same statutory language.

In acts dealing with the environment, the standard language is modified to some extent. Certain matters are exempted from mandatory secrecy. The public interest in educating the populace as to contaminants of the environment is recognized in The Environmental Protection Act. Civil servants are charged with maintaining secrecy with respect to all matters "except as to information in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment."³⁰ As noted above, however, exempting something from mandatory secrecy does not automatically place that information in the public domain; it merely gives the civil servant a discretion to release the information should he wish to do so.

The Environmental Assessment Act requires secrecy only in relation to "any survey, examination, test or inquiry,"³¹ and provides for mandatory disclosure of certain other kinds of information. This may

30 S.O. 1971, c. 86, s. 87(1).

31 S.O. 1975, c. 69, s. 28(1).

appear to be a fine tuning of the system, but section 31 of the Act effectively nullifies this "fine tuning" by vesting in the Minister of the Environment a discretion to keep secret anything he wishes, even if that information would normally be required to be public by the Act. The end result is a blanket power for the government to keep things secret. This Act does not specifically require civil servants to maintain secrecy about "all matters" that come to their knowledge. However, they are still required to keep "all matters" secret by virtue of their oath of secrecy under The Public Service Act. The "fine tuning" of the system is not as great as the language of some acts may at first lead one to believe.

The first of the three standard exceptions to secrecy is the release of information required for the administration of the act or proceedings under the act. Most acts require some interaction between the public and civil servants if the act is to be implemented. Naturally enough, civil servants are allowed to communicate with the public for this purpose.

The second exception is to allow release of information to the counsel of a civil servant. This does not enlarge to any great extent the circle of people receiving government information. The notion of "privilege" attaches to information given to counsel. Counsel is not allowed to divulge what his client tells him without the client's consent. No one, not even the courts, can force counsel to betray the

confidence of a client.³² In the case where the client is a civil servant, the client cannot legally allow the counsel to release the information to the world, as that would be equivalent to the civil servant himself releasing the information, something which the act makes illegal. Thus, information passed to counsel, under the second exception, can go no further.

The third exception is the most important. The exception seems to recognize a continuing interest, on the part of the submitter, in information which the government requires for the administration of legislation. There is no distinction made between information voluntarily submitted and information required to be submitted, whether by the filing of statements or in the course of a mandatory inspection.

As noted previously, the Inquiry into Civil Rights concerned itself with the possibility of infringing upon individual rights by the government's use of information for purposes other than those for which the information was originally collected. The divulging of information to third parties is not normally one of the purposes for which information is collected. These standard form secrecy provisions were designed to ensure that the government maintained the confidentiality

32 One exception would arise if counsel were involved in furthering criminal activity. At this point counsel becomes a criminal as well. The idea of a defensible privilege for communications between criminals is contrary to the intent of the doctrine of privilege between solicitor and client, since the solicitor-client privilege is justified as necessary for the better administration of justice.

of information received from the private sector. If a person consents to release of information about himself, then the basis for secrecy, as recognized by the McRuer Report, ceases to exist. The government then is free to deal with the information as it chooses.

Essentially these secrecy provisions attempt to protect the privacy and confidentiality of those who submit information to the government. A properly framed information access scheme would protect these interests equally as well as the present broadly worded secrecy provisions. The present provisions, having served their purpose, could then be repealed, for they would be redundant and would merely serve to frustrate access to other kinds of information held by the agencies administering the acts in question.

3. Specific Secrecy Provisions

The remaining secrecy provisions in the statutes that are not in the standard form generally operate to protect government-held information about the private sector. No examination of the detailed language of such sections will be attempted. The practices of various government bodies administering these acts are being looked at in detail by Commission staff on other research projects. The issues and concerns relating to these specific areas are dealt with in other research reports. Should the Commission recommend general legislation on freedom

of information, these reports may offer some guidance for the drafting of appropriate exemptions to protect the legitimate concerns involved, both in government and in the private sector. General legislation might then supersede the many existing specific secrecy sections. If no general legislation is recommended, it would seem appropriate for each existing secrecy provision to be reviewed. Again, further research would be necessary to carry out an effective review of this kind.

Some of the many specific secrecy provisions in the statutes relate to the following matters:

- . information acquired for assessment valuation purposes³³
- . inspection or testing reports under The Building Code Act, 1974³⁴
- . data concerning patients³⁵ or cancer remedies tests³⁶
- . adoption proceedings³⁷
- . government involvement in certain labour matters³⁸

33 The Assessment Act, R.S.O. 1970, c. 32, ss. 78, 79; The Planning Act, R.S.O. 1970, c. 349, s. 7.

34 S.O. 1974, c. 74, s. 22.

35 The Cancer Act, R.S.O. 1970, c. 55, s. 6a(1), as enacted by S.O. 1972, c. 34, s. 1.

36 The Cancer Remedies Act, R.S.O. 1970, c. 56, ss. 5, 7.

37 The Child Welfare Act, R.S.O. 1970, c. 64, ss. 46(3), 79, 80.

38 The Colleges Collective Bargaining Act, S.O. 1975, c. 74; The Crown Employees Collective Bargaining Act, 1972, S.O. 1972, c. 67, ss. 36, 49; The Labour Relations Act, R.S.O. 1970, c. 232, ss. 23, 63, 91, 100; The School Boards and Teachers Collective Negotiations Act, 1975, S.O. 1975, c. 72, s. 27.

- . hearings regarding The Compensation for Victims of Crime Act, 1971 39
- . inspections, tests, accidents involving industrial safety⁴⁰
- . detailed reports required from various corporations⁴¹
- . student records⁴²
- . ballots, etc. during elections⁴³
- . OHIP information⁴⁴
- . personal information under The Human Tissue Gift Act⁴⁵
- . applications for licences under The Insurance Act⁴⁶
- . affairs of the Law Society of Upper Canada and its members⁴⁷
- . affairs of legal aid applicants⁴⁸
- . drilling information collected under The Mining Act⁴⁹

39 S.O. 1971, c. 51, s. 13.

40 The Construction Safety Act, 1973, S.O. 1973, c. 47, s. 8; The Employment Standards Act, 1974, S.O. 1974, c. 112, s. 45(3), (4); The Industrial Safety Act, 1971, S.O. 1971, c. 43, ss. 13, 14, 15; The Workmen's Compensation Act, R.S.O. 1970, c. 505, ss. 81a, 98, 99.

41 The Co-Operative Corporations Act, 1973, S.O. 1973, c. 101, s. 142; The Corporations Information Act, 1976, S.O. 1976, c. 66, s. 8; The Corporations Tax Act, 1972, S.O. 1972, c. 143, s. 166.

42 The Education Act, 1974, S.O. 1974, c. 109, s. 231.

43 The Elections Act, R.S.O. 1970, c. 142.

44 The Health Insurance Act, 1972, S.O. 1972, c. 91, s. 44.

45 S.O. 1971, c. 83, s. 11.

46 R.S.O. 1970, c. 224, ss. 18, 90.

47 R.S.O. 1970, c. 238, ss. 13(1), 13(2), 37.

48 The Legal Aid Act, R.S.O. 1970, c. 239, s. 25.

49 R.S.O. 1970, c. 274, ss. 611(7), 617(10).

- . information collected under The Ontario Guaranteed Annual Income Act, 1974 50
- . The Police Act discipline and proceedings evidence⁵¹
- . information about people in facilities subject to The Private Sanitaria Act 52
- . information about people subject to The Venereal Diseases Prevention Act 53
- . information collected for statistical purposes only⁵⁴
- . information arising out of Ontario Securities Commission investigations 55
- . tax and revenue collection information⁵⁶

These specific sections appear to be aimed at protecting the confidentiality of information supplied to the Ontario government by

50 S.O. 1974, c. 58, ss. 10, 15(1).

51 R.S.O. 1970, c. 351, s. 57(4), 57(8).

52 R.S.O. 1970, c. 363, s. 42.

53 R.S.O. 1970, c. 479, ss. 12, 13, 14, 15, 18, 21.

54 The Statistics Act, R.S.O. 1970, c. 443; The Vital Statistics Act, R.S.O. 1970, c. 483.

55 The Securities Act, R.S.O. 1970, c. 426, ss. 24, 25.

56 The taxing statutes and their sections are as follows: The Corporations Tax Act, 1972, S.O. 1972, c. 143, s. 166; The Gasoline Tax Act, 1973, S.O. 1973, c. 99, s. 30; The Gift Tax Act, 1972, S.O. 1972, c. 12, s. 52; The Income Tax Act, R.S.O. 1970, c. 217, s. 44; The Land Speculation Tax Act, 1974, S.O. 1974, c. 17, s. 18; The Mining Tax Act, 1972, S.O. 1972, c. 140, s. 11(1); The Motor Vehicle Fuel Tax Act, R.S.O. 1970, c. 282, s. 19; The Race Tracks Tax Act, R.S.O. 1970, c. 397, s. 12; The Retail Sales Tax Act, R.S.O. 1970, c. 415, s. 14(1); The Succession Duty Act, R.S.O. 1970, c. 449, s. 43; The Tobacco Tax Act, R.S.O. 1970, c. 463, s. 12.

the private sector. In areas such as tax return information and private data resulting from OHIP claims, such statutory secrecy would probably be generally approved.

Two points should be noted, however. First, in a number of statutes there are no statutory secrecy provisions. Acts such as The Family Benefits Act⁵⁷ result in large quantities of the most personal and intimate information being passed through government hands, and yet there is no secrecy provision in the Act. The totality of the statutory secrecy provisions in no way provides a comprehensive privacy protection scheme for individuals in Ontario. Second, there are areas in which legislated secrecy exists where the need for such secrecy may not be so readily accepted by the public. Information about government regulated businesses may fall into this category. For example, the secrecy of inspection and testing reports under The Building Code Act, The Construction Safety Act, The Employment Standards Act, The Industrial Safety Act and The Workmen's Compensation Act might be challenged by certain public interest or labour groups.

In addition to the general standard form sections and the specific secrecy provisions described above, there are other kinds of statutory provisions which have the effect of denying information access to the Ontario public.

57 R.S.O. 1970, c. 157.

At least 50 statutes confer on various boards and tribunals the right to hold in camera hearings.⁵⁸ The information submitted or generated is thus kept from the public domain. In camera hearings are discussed in another study undertaken for the Commission.⁵⁹

Many public and private statutes of Ontario provide for government secrecy at the municipal level.⁶⁰ Such legislation includes statutes incorporating municipalities and dealing with the planning process in land development. Education, assessment and municipal elections are

58 See L. Fox, op.cit., supra note 1.

59 L. Fox, op.cit., supra note 1.

60 Municipal law relating to the areas of the Commission's inquiry is dealt with in S. Makuch and J. Jackson, op.cit., supra note 1, and will not be discussed in this report. Some of the public acts in the area and their secrecy provisions are:

The Assessment Act, R.S.O. 1970, c. 32, ss. 78, 79; The County of Oxford Act, 1974, S.O. 1974, c. 47, s. 21(1); The District Municipality of Muskoka Act, R.S.O. 1970, c. 131, s. 19(1); The Education Act, 1974, S.O. 1974, c. 109, s. 231; The Municipal Elections Act, 1972, c. 95; The Municipal Act, R.S.O. 1970, c. 284, s. 216(1); The Ontario Municipal Board Act, R.S.O. 1970, c. 323, s. 101; The Planning Act, R.S.O. 1970, c. 349, s. 7(2); The Regional Municipality of Durham Act, 1973, S.O. 1973, c. 78, s. 21(1); The Regional Municipality of Haldimand-Norfolk Act, 1973, S.O. 1973, c. 96, s. 21(1); The Regional Municipality of Halton Act, 1973, S.O. 1973, c. 70, s. 21(1); The Regional Municipality of Hamilton-Wentworth Act, 1973, S.O. 1973, c. 74, s. 21(1); The Regional Municipality of Peel Act, 1973, S.O. 1973, c. 60, s. 21(1); The Regional Municipality of Sudbury Act, 1972, S.O. 1972, c. 104, s. 21(1); The Regional Municipality of Waterloo Act, 1972, S.O. 1972, c. 105, s. 21(1); The Regional Municipality of Niagara Act, R.S.O. 1970, c. 406, s. 20(1); The Regional Municipality of York Act, R.S.O. 1970, c. 408, s. 20(1); The Regional Municipality of Ottawa-Carleton Act, R.S.O. 1970, c. 407, s. 20(1).

dealt with in acts that have secrecy provisions. The Municipal Act itself provides certain legal rights to a municipality to refuse to disclose information.⁶¹

There are several statutes which do not require secrecy, but which place a discretion to make a matter public in the hands of some government official. A short note on such sections and the American experience with this type of legislative language follows.

4. Discretions Granted to Public Officials to Publish Information

A number of statutes confer an express discretion on public officials to publish certain documents or information. This type of provision caused some initial problems in the American experience with the Freedom of Information Act (FOIA).⁶²

In Mobil Oil Corporation v. FTC,⁶³ Mobil requested copies of all letters, correspondence or other communications concerning petroleum use which the Federal Trade Commission had sent or received from

61 R.S.O. 1970, c. 284, s. 216(1).

62 5 U.S.C. s. 552, as amended. See Part D, "Statutory Secrecy and Freedom of Information," #5, the United States, infra.

63 406 F. Supp. 305 (1976).

Congress and any other federal or state agencies between January, 1970 and August, 1973. The FTC argued that this information was exempt from disclosure by statute. The Federal Trade Commission Act⁶⁴ gives the FTC the power to make public and publish such information "as it shall deem expedient in the public interest." The FTC argued that this section of the Act gave a discretion to withhold information in the public interest.

The court rejected the argument and said that the Act gave authority to make things public, not to declare things secret. It was the intent of the section to facilitate making information public and the section could not be used for the contrary purpose of keeping things secret. The FTC claim for an exemption based upon statute was denied. The court decided that discretion to make information public did not amount to a right to withhold information.

An Ontario example of the kind of discretion being discussed is found in The Cancer Remedies Act R.S.O. 1970, c. 46, s. 7:

64 15 U.S.C. s. 46(f): "The Commission shall also have the power -- (f) "Publication of information; reports: To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use."

7. The Commission shall make a report of any determination or finding relating to a substance or method of treatment,
 - (a) to the Minister; and
 - (b) to the person who submitted the substance or method to the Commission for investigation,and the Minister may publish the report in such manner as he considers proper.

Unless the study report on a cancer remedy is protected by one of the other exemptions in an information access statute (e.g., on grounds of value or privacy invasion), it seems unreasonable that the above section should form the basis of a refusal to an FOIA request for a copy of the report.

Discretions such as that found in The Cancer Remedies Act should not be abolished. It would be wasteful and unwise to force publication of all such reports, since publication of some reports might not be of public interest and benefit. A discretion to publish some, and not others, is sensible. However, should the Commission recommend a general act, it is suggested that some indication be included that the sections conferring a discretion to make information public shall be deemed not to be the basis for an exemption claim.

5. Regulations

Regulations are generally made by Cabinet (or at least approved by Cabinet if made by civil servants or agency heads). Regulations have the force and effect of law once they are validly proclaimed, filed

and published in the Ontario Gazette. At present, some regulations legislate secrecy.⁶⁵ It is suggested that any legislation in Ontario that requires government secrecy should be debated and publicly scrutinized in the Assembly and approved by majority vote. Only by an act of the legislature should secrecy become the law of the land.

In Australia, the Freedom of Information Bill⁶⁶ does not adhere to the above principle. Section 5 allows the Cabinet to make regulations exempting any government body, or any document or activity from compliance with the information access requirements. Such a provision gives tremendous leeway for inordinate government secrecy in the face of an information access regime.

One method of dealing with the issue of secrecy by regulation might be to amend The Regulations Act to authorize the committee that reviews

65 For example, a regulation made under The Ministry of Correctional Services Act, R.S.O. 1970, s. 110, published in R.R.O. 1970, Reg. 166, s. 21(c), (d), reads as follows:

No employee shall,

- (c) discuss within the hearing of inmates, matters that may adversely reflect upon the actions of another employee, or the administration, or its policy; or [O. Reg. 146/71, s. 2]
- (d) without first obtaining the permission of the Deputy Minister, furnish to any person any information in respect of an institution, or remove from an institution any ledger, journal, report or record, or any copy thereof, dealing with the business of the institution. [O. Reg. 345/69, s. 21(d)]

66 See Part D, "Statutory Secrecy and Freedom of Information," #2, Australia, infra.

regulations to report proposed secrecy regulations to the Legislative Assembly, and those regulations would be effective only until reviewed within a specified time by the Assembly and would be conditional on receiving approval by vote of the Assembly. Existing regulations could be reviewed by all government bodies with a view to either eliminating those which impose secrecy, or having them approved by the Assembly. Some examples of such existing secrecy regulations are found under The Legal Aid Act, O. Reg. 536/76, s. 137(1), (2); The Mental Hospitals Act, R.R.O. 1970, Reg. 578, s. 3; The Ministry of Correctional Services Act, R.R.O. 1970, Reg. 166, ss. 21(d), 35; The Registry Act, R.R.O. 1970, Reg. 777, Forms 2 and 3.

D. Statutory Secrecy and
Freedom of Information

1. Introduction

Present secrecy provisions are phrased so broadly that virtually any piece of information or document could be considered secret under the law of Ontario. Should the present statutory sections be left untouched, the impact of any new freedom of information proposals could be effectively nullified. A number of avenues might be explored regarding possible changes to existing secrecy legislation.

First, existing secrecy provisions could be tailored individually to restrict their present wide scope, while at the same time protecting those matters necessary for the effective functioning of the particular agency or ministry. Alternatively, the secrecy provisions could be repealed and an information access statute could include several specifically-worded exemptions to disclosure that would protect information necessarily secret in the interests of both government and the private sector. The law regarding secrecy of government information would be clearly stated and simple to use since it would all be in one piece of legislation.

In recognition of the fact that both government and the private sector have in the past relied on the secrecy provided by various acts, a freedom of information regime might be limited only to information generated or collected by government in the future. Another approach might be to state what must be made public, notwithstanding the secrecy provisions in any other act. Those things not specifically declared public would be dealt with according to existing law and practice.

A transitional approach might be taken by the enactment of a "sunset clause" declaring that all the secrecy sections in force in Ontario would be repealed in one year. It would also ensure that any proposed new secrecy sections would be publicly debated in the legislature. Any deviations from the general policy of openness would have to be fully justified or the government of the day would suffer the political consequences. The one-year transition period would allow the various

ministries and agencies to organize their responses to increased access, and to gain experience in dealing with the new regime.

Yet another solution might be to pass an information access statute that would override existing secrecy provisions in any other act. Other jurisdictions have introduced freedom of information legislation or have produced studies that recommend such legislation. Each jurisdiction has had to grapple with the problem of integrating an information access regime with existing legislation calling for government secrecy. Several different approaches to this problem have been adopted or recommended. The following jurisdictions will be examined to see how they have dealt with this issue: Australia, Canada, Sweden, the United States, and the provinces of Nova Scotia and New Brunswick.

2. Australia⁶⁷

In 1976, the Royal Commission on Australian Government Administration made its Final Report. The Report contained a minority report⁶⁸ which included a draft Freedom of Information Bill (1976). Section 56 of this

67 For a good discussion of the Australian experience, see McMillan, J., Freedom of Information in Australia: Issue Closed (1977), 8 Fed. L.R. 379.

68 Minority Report, "Freedom of Information" in Aust., Royal Commission on Australian Government Administration, Appendix, Vol. 2, at 1-156 (A.G.P.S., July, 1976).

draft legislation stated that:

Every enactment which provides for, prohibits or regulates the disclosure of documents in the possession of any agency, or which prescribed the rules to be applied where a person requests access to such a document, shall be read subject to this Act.

The result of such a section would have been to make freedom of information act exemptions the only legal justifications for government's refusal to disclose information: secrecy provisions in other statutes would be rendered ineffective. Such a section would be an indirect method of repealing all statutory secrecy provisions that did not conform to an FOIA. If a need for stricter secrecy were established, it would, of course, remain in Parliament's power to amend an FOIA.

The Australian Interdepartmental Committees of 1974⁶⁹ and 1976 also studied the freedom of information issues, and last year the Australian government introduced the Freedom of Information Bill (1978) in Parliament.⁷⁰ At the time of writing the Bill had received second reading, but not final reading.

The 1978 Bill leaves all statutory secrecy sections fully operative. If a statute restricts or prohibits disclosure of any document or

69 I.D.C. Report: "Policy Proposals for Freedom of Information Legislation" Parliamentary Paper, tabled Dec. 1974 (A.G.P.S.).

70 Printed by Commonwealth Government Printer, 500/7.6.1978 - 11209/77.

information, then a request for that document or information may be refused by the government (s. 28). The Bill does not require officials to refuse access to information protected by other statutes; the government still has discretion to release documents or information which qualify for exempt or secret status (s. 8). Any discretion given under the Bill would, of course, be subject to mandatory secrecy requirements in other statutes.

Australia apparently only has some 40 statutes regulating disclosure of information.⁷¹ Ontario has approximately three times as many. If the Australian approach were adopted in Ontario, then all of the present statutory secrecy provisions would remain fully operative. Most of the Ontario secrecy sections are mandatory in their wording. They leave the government no discretion to release information. Existing Ontario secrecy legislation covers so much of the government's activities that any new policy of openness could be badly undercut and reduced to virtual window-dressing if the approach taken by the Australian Freedom of Information Bill (1978) were followed.

3. Canada

The federal Standing Joint Committee on Regulations and Other Statutory Instruments has been studying the freedom of information issue since

71 McMillan, supra note 67, at 411.

February 1975. In their Final Report⁷² it was recommended that existing statutory secrecy provisions remain operative, but it was also recommended that all these sections be reviewed and possibly amended to bring them more into line with the philosophy of government openness. The major problem with this approach is that there is no guarantee of the secrecy provisions being amended over time. The government of the day could frustrate the effective implementation of freedom of information simply by doing nothing.

4. Sweden

The Swedish system makes extensive use of specific legislative secrecy provisions which operate as exceptions to the openness dictated by the Swedish Constitution.⁷³ The Swedish model provides little insight into what should be done with Ontario secrecy sections presently in place. An argument could be made that, since Sweden has a large number of secrecy provisions scattered through its statutes, then it would be reasonable to leave the secrecy provisions in Ontario statutes fully operative. However, the Swedes have a 200-year history of openness or

72 Can., H. of C., Votes & Proceed. (30th Parl., 3d Sess.) June 28, 1978, at 920.

73 See Rowat, D., ed., Administrative Secrecy in Developed Countries, supra note 6, at 1-30, for an analysis of the Swedish approach to information access.

freedom of information. The secrecy provisions in Swedish law have been developed as conscious exceptions to a general policy of openness. In Ontario, secrecy has been legislated as the general rule and openness has been the exception.

5. United States

When the United States first enacted the federal Freedom of Information Act in 1966, provision was made to exempt information "specifically exempted from disclosure by statute."⁷⁴ In 1974, the FOIA was amended substantially, and in 1976, a further amendment repealed the exemption and replaced it with the following:

... specifically exempted from disclosure by statute, provided that such statute (A) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

75

One of the principal reasons for amending this exemption (called exemption #3)⁷⁶ was to reverse the 1975 decision of the United States Supreme Court in the case of FAA Administrator v. Robertson.⁷⁷ In Robertson, Robertson had requested that the Federal Aviation Agency

74 5 U.S.C. s. 552(6), (3).

75 Id., as amended.

76 Report of the House of Representatives 94-880 at 23.

77 422 U.S. 255 (1975).

make available certain reports which had analyzed the operation and performance of commercial airlines. The Federal Aviation Act permitted the FAA Administrator to withhold disclosure of these reports, if there had been objections to disclosure, and if disclosure was not required in the public interest.⁷⁸ The Air Transport Association objected to disclosure of the reports and the FAA Administrator refused to give the reports to Robertson. A number of the FOIA exemptions were claimed by the FAA, but the focus of the subsequent argument in the Supreme Court was on the Federal Aviation Act section.

The court held that the reports in question were exempt from public disclosure under exemption 3, for the reports had been "specifically exempted from disclosure by statute." However, when one looks at the statute in the Robertson case, one sees that no particular criteria are established for withholding information.⁷⁹ On the contrary, there

78 Federal Aviation Act of 1958, 49 U.S.C. 1504, s. 1104.

79 Id.:

Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this chapter or of information obtained by the Board or the Administrator, pursuant to the provisions of this chapter, stating the grounds for such objection. Whenever such objection is made, the Board or the Administrator shall order such information withheld from public disclosure when, in their judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public. The Board or Administrator shall be responsible for classified information in accordance with appropriate law: Provided, That nothing in this section shall authorize the withholding of information by the Board or Administrator from the duly authorized committees of the Congress.

is a complete discretion to withhold vested in the FAA Administrator, to be exercised "in the public interest." In Robertson the court held that this complete discretion to withhold was acceptable.⁸⁰ The court argued that the Freedom of Information Act was not intended to override statutory withholding provisions that had existed prior to its enactment. The result in this case was that Robertson did not get the information he requested.

Congress found the result of the Robertson case inconsistent with the philosophy and purpose of the FOIA.⁸¹ A statute which gives a blanket discretion to withhold information in the public interest or in the unqualified discretion of some government official will no longer

80 The language of the FOIA was construed broadly. Such difficulties in interpretation could be avoided in Ontario by careful drafting if an information access statute is to be put in place. Chief Justice Burger stated in the opinion of the court in Robertson, 422 U.S. 255 at 265 (1975):

The respondents can prevail only if the Act is to be read as repealing by implication all existing statutes "which restrict public access to specific Government records." The term "specific" as there used cannot be read as meaning that the exemption applies only to documents specified, i.e., by naming them precisely or by describing the category in which they fall. To require this interpretation would be to ask of Congress a virtually impossible task. Such a construction would also imply that Congress had undertaken to reassess every delegation of authority to withhold information which it had made before the passage of this legislation -- a task which the legislative history shows it clearly did not undertake. Earlier this Term, Mr. Justice Brennan, speaking for the Court in the Regional Rail Reorganization Act Cases, supra, noted that "repeals by implication are disfavored, ..."

81 Report of the House of Representatives 94-880.

provide legal justification for withholding information. Now a statute other than the FOIA can be used to justify denial of an information request only if:

- a) the statute states that government employees shall not release the requested information and leaves the employees no choice in the matter or;
- b) the statute gives employees a discretion to withhold information but establishes particular criteria that must be used in making the decision to withhold or;
- c) the statute refers to particular types of matters to be withheld.

The following hypothetical example demonstrates how the FOIA exemption would work in practice. Assume a statute includes the following section: "All housing documents shall be kept secret." This section leaves the government employees no choice. Housing documents would therefore fall under the FOIA exemption as being exempted from disclosure by statute.

If the section were worded as follows, the result would be different:

Housing documents may be kept secret if:

- a) they contain individuals' names and addresses;
- b) they contain information which would endanger the negotiating position of the agency in land purchases;
- c) they contain information thought to be adverse to the public interest.

Subsection (a) would justify non-disclosure since it refers to "particular types of matters to be withheld." Subsection (b) would justify non-disclosure since "particular criteria for withholding" are

set out. The documents must relate to land purchases somehow and their release must damage or threaten the agency's ability to negotiate land deals. Subsection (c) would not justify non-disclosure, since it amounts to a blanket discretion to withhold information with no particular guidelines to be followed.

In Ontario, most statutory secrecy provisions use language of the "shall keep secret" type. The wording of the American FOIA exemption, discussed above, if imported into Ontario law, would leave most secrecy sections fully operative. As noted in the case of the Australian proposals, vast amounts of government information would remain secret if existing Ontario statutes remain unchanged.

Adopting the American-style approach to statutory secrecy could effectively nullify any new Ontario policy of openness.

6. Nova Scotia

The Nova Scotia Freedom of Information Act does not expressly deal with the relationship of existing statutory secrecy and the FOIA.⁸² Section 3 of the Act sets out those documents and pieces of information

⁸² S.N.S., 1977, c. 10. The ambit of s. 4(j) is unclear since "confidentiality" and "protected" remain undefined in the phrase "information the confidentiality of which is protected by an enactment."

which must be made public upon request.⁸³ Section 4 of the FOIA then lists 10 exemptions⁸⁴ to disclosure of the matters listed in section

83 Id., s. 3:

Every person shall be permitted access to information respecting:

- (a) organization of department;
- (b) administrative staff manuals and instructions to staff that affect a member of the public;
- (c) rules of procedure;
- (d) descriptions of forms available or places at which forms may be obtained;
- (e) statements of general policy or interpretations of general applicability formulated and adopted by a department;
- (f) final decisions of administrative tribunals;
- (g) personal information contained in files pertaining to the person making the request;
- (h) the annual report and regulations of a department;
- (i) programs and policies of a department; and
- (j) each amendment, revision or repeal of the foregoing.

84 Id., s. 4:

Notwithstanding section 3, a person shall not be permitted access to information which:

- (a) might reveal personal information concerning another person;
- (b) might result in financial gain or loss to a person or a department, or which might influence negotiations in progress leading to an agreement or contract;
- (c) would jeopardize the ability of a department to function on a competitive commercial basis;
- (d) might be injurious to relations with another government;
- (e) would be likely to disclose information obtained or prepared during the conduct of an investigation concerning alleged violations of any enactment or the administration of justice;
- (f) would be detrimental to the proper custody, control or supervision of persons under sentence;
- (g) would be likely to disclose legal opinions or advice provided to a department by a law officer of the Crown, or privileged communications between barrister and client in a matter of department business;
- (h) would be likely to disclose opinions or recommendations by public servants in matters for decision by a Minister or the Executive Council;
- (i) would be likely to disclose draft legislation or regulations;
- (j) would be likely to disclose information the confidentiality of which is protected by an enactment.

3. The exemption section is unique in freedom of information legislation in that it requires secrecy of the exempt material; most information access acts leave government officials with a discretion to release exempt information, but Nova Scotia does not. If the information falls into one of the categories in section 4, then access shall not be given.

If information is presently being given out but would fall into the mandatory secrecy provision of section 4, then government employees may continue to provide the information to the public.⁸⁵ Under a literal interpretation of the FOIA, it would appear that the development of any new practices of providing information is discouraged.

It is not clear what effect the access provisions of the FOIA are to have on existing secrecy sections in Nova Scotia statutes. However, if traditional principles of statutory interpretation are applied, it appears that all existing statutory secrecy provisions would remain fully operative and operate as exceptions to even the limited disclosure requirements of the Nova Scotia Freedom of Information Act.⁸⁶

85 Id., s. 5:

Nothing contained in section 3 or 4 shall be interpreted to restrict or be deemed to be interpreted to restrict access to information provided to the public by custom or practice prior to the coming into force of this Act.

86 For detailed discussions of the rules of statutory construction applicable in this case, see Driedger, E.A., The Construction of Statutes (Toronto, Butterworths, 1974) and Langan, P., ed., Maxwell on the Interpretation of Statutes (12th ed., London: Sweet & Maxwell, 1969) at 191 ff.

86 (cont'd)

In particular, note Driedger at 176:

The general statute is made to "yield" by regarding the special statute as an exception to the general. The special, whether earlier or later in time, therefore, has the effect of reducing the scope of the general. In City of Ottawa v. Town of Eastview Rinfret J. said:

The principle is, therefore, that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception of the subject-matter of the rule from the general Act.

And note Maxwell at 196:

Generalia specialibus non derogant

"Now if anything be certain it is this," said the Earl of Selborne L.C. in The Vera Cruz, "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." In a later case, Viscount Haldane said:

We are bound ... to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to.

7. New Brunswick

The Right to Information Act⁸⁷ creates a general right to "information relating to the public business of the Province."⁸⁸ Section 6 of the Act provides that there is no right to information under the Act where its release would disclose information the confidentiality of which is protected by law. There are other exemptions to disclosure of government information,⁸⁹ but this appears to be the one that deals with the relationship of secrecy sections.

87 S.N.B. 1978, s. R.10-3.

88 Id., s. 2.

89 Id., s. 6:

There is no right to information under this Act where its release:

- (a) would disclose information the confidentiality of which is protected by law;
- (b) would reveal personal information, given on a confidential basis, concerning another person;
- (c) would cause financial loss or gain to a person or department, or would jeopardize negotiations leading to an agreement or contract;
- (d) would violate the confidentiality of information obtained from another government;
- (e) would be detrimental to the proper custody, control or supervision of persons under sentence;
- (f) would disclose legal opinion or advice provided to a person or department by a law officer of the Crown, or privileged communications as between solicitor and client in a matter of department business;
- (g) would disclose opinions or recommendations by public servants for a Minister or the Executive Council;
- (h) would disclose the substance of proposed legislation or regulations;
- (i) would impede an investigation, inquiry or the administration of justice.

Under the New Brunswick scheme, all existing statutory secrecy sections would remain fully in force. If this exemption wording were adopted in Ontario the result would be the same. Under more than 100 Ontario statutes, information would be secret by law and any new policy of openness could be severely curtailed in practice.

Thus, the approaches adopted by the jurisdictions of Australia, Canada, Sweden, the United States, Nova Scotia or New Brunswick would produce little change in the existing legal framework of statutory secrecy in Ontario.

E. Withholding Government Information
from Court Proceedings

1. Introduction

There are three basic legal mechanisms by which government-held information may be withheld from production in the courts:

- 1) The government may assert Crown privilege.⁹⁰ This is a general common law right of ministers of the Crown to refuse

90 This discussion does not include the solicitor-client privilege, although the government can claim it, as can any individual or entity who retains a solicitor. Other types of privilege are discussed in relation to protection for personal privacy in present Ontario law.

to produce documents or answer questions in court. Crown privilege may also be claimed in relation to the testimony of government employees and documents in their possession.

2) A statute may state that government employees cannot be compelled to be witnesses or give evidence in court, relating to official duties. This will be referred to as "statutory non-compellability."

3) A statute may state that government employees are incompetent to give evidence in court in relation to their official duties; that is, they are expressly prohibited from giving evidence in court even if they wish to do so.

The doctrine of Crown privilege and statutory non-compellability both leave a discretion in the government as to whether an employee or minister will testify. The government can decide to have employees testify in one case and not in another. If a statute states that an employee is incompetent to testify, then there is no choice available to the government; the employee cannot testify in any circumstances, even if both the government and the employee wish the court to have the benefit of the testimony. Such provisions are rare.

The issue of the government's withholding information from the courts may arise in a number of different circumstances. The factors to be considered vary greatly, depending upon the government's relationship

to the particular matter before the courts. The government may be a party to a civil suit. For example, an Ontario government delivery truck might be involved in a traffic accident. Or the government may hold information relevant to a civil lawsuit between two other parties; for example, where a provincially-licensed mortgage broker is being sued by a client for fraud. Or the government may be acting as prosecutor in prosecutions under the Criminal Code or under a provincial statute. Finally, a private citizen may be acting as prosecutor and the government may possess relevant information.

Central to the discussion of present Ontario law relating to freedom of information is the concept of Crown privilege. A brief account of the development of the law relating to Crown privilege and the present Ontario law follows.

2. Crown Privilege

Crown privilege may be invoked by the government to deny information to the courts.⁹¹ It may not be in the public interest to have certain government-held information made public and the government may refuse to produce documents or refuse to allow government personnel to testify

91 See generally, Bushnell, S.I., Crown Privilege (1973), 51 Can. B. Rev. 551.

in court proceedings. The privilege extends beyond the documents in which sensitive information is contained to secondary oral or written evidence as well.⁹² Crown privilege may be claimed by the government in relation to information required for any court proceeding. It does not matter whether the government is involved in the court case as a party or whether the government-held information is required for a court dispute between two other parties. Privilege is usually claimed by the government, of course, but a judge may invoke the doctrine in the absence of an official objection,⁹³ and any party or witness may bring the matter to the court's attention.⁹⁴

a) Statute Law

The law pertaining to Crown privilege is to be found in the traditions of the Westminster system and the common law: in Ontario there is no statute setting out the law of Crown privilege. At the federal level

92 R. v. Snider, [1954] S.C.R. 479, 54 D.T.C. 1129, [1954] C.T.C. 255, 109 C.C.C. 193; Gronlund v. Hansen (1968), W.W.R. 74, at 90-92 (B.C.C.A.).

93 Conway v. Rimmer, [1968] A.C. 910, at 950-51, [1968] 1 All E.R. 874, at 887.

94 Gaming Board for Britain v. Rogers, [1972] 3 W.L.R. 279, [1972] 2 All E.R. 1057 (H.C.).

in Canada, the Federal Court Act,⁹⁵ section 41, deals with claims of Crown privilege made before the Federal Court. That section, as a general rule, allows a judge to examine documents for which Crown privilege is claimed to determine if the claim is to be upheld. Exceptions to the rule are created, however. The section appears to deviate from the common law in that no judicial review of Crown privilege claims is permitted if the claim is made under any of the following heads:

- . international relations
- . national defence or security
- . federal-provincial relations
- . Cabinet confidences.

95 R.S.C. 1970, c. 10 (2d Supp.):

41. (1) Subject to the provisions of any other Act and to subsection (2), when a Minister of the Crown certifies to any court by affidavit that a document belongs to a class or contains information which on grounds of a public interest specified in the affidavit should be withheld from production and discovery, the court may examine the document and order its production and discovery to the parties, subject to such restrictions or conditions as it deems appropriate, if it concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs in importance the public interest specified in the affidavit.

(2) When a Minister of the Crown certifies to any court by affidavit that the production or discovery of a document or its contents would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council for Canada, discovery and production shall be refused without any examination of the document by the court.

Federal Court judges may not question any of the above claims, nor examine the documents for which privilege is asserted.⁹⁶

A number of Ontario statutes give certain specific civil servants particular authorization to refuse to testify in court. These will be discussed later,⁹⁷ but the law of Crown privilege is not affected by such statute sections. These sections are individually limited in scope to dealings under the particular acts in which they appear. The doctrine of Crown privilege is not restricted to any particular area of government activity and Crown privilege might be claimed instead of, or at the same time as, a specific statutory authority to refuse information to the courts.

One Ontario statute deals generally with access to government information for the purpose of court proceedings. Under The Proceedings Against the Crown Act,⁹⁸ the government can be sued and held liable to pay for wrongs committed by civil servants.⁹⁹ Whereas an ordinary

96 This statute law regarding Crown privilege has attracted criticism in the past, and is presently under attack as the freedom of information debate goes on in Ottawa. See Rankin, M., Freedom of Information in Canada: Will the Door Stay Shut? (Ottawa: Canadian Bar Association, 1977), and the Final Report of the Standing Joint Committee on Regulations and Other Statutory Instruments, supra note 72.

97 See section, "Statutory Non-Compellability of Civil Servants," infra.

98 R.S.O. 1970, c. 365.

99 For a detailed discussion of problems involved in suing the Ontario government in tort, see the section, "Suing the Crown in Ontario," infra.

defendant in a lawsuit can be forced to produce all relevant documents for the plaintiff's inspection and answer questions asked by the plaintiff at a pre-trial procedure called "discovery," section 12 of the Act allows the government to refuse to produce documents or answer questions at discovery "on the ground that the production or answer would be injurious to the public interest." The Act does not define "public interest," so resort must be had to the common law. The Act merely incorporates the common law test and concept of Crown privilege.¹⁰⁰ Any examination of the government's privilege in Ontario must be done solely in the context of the common law cases.

b) Common Law

The law concerning Crown privilege in English and Canadian courts was long dominated by the precedent set by Duncan v. Cammell, Laird & Co.¹⁰¹ In an action brought on behalf of the estates of lost seamen against the manufacturer of a British submarine that sank, the defendants relied on Crown privilege to resist the production of engineering designs. The First Lord of the Admiralty swore an affidavit that, upon a personal consideration of the documents, he was of the opinion that disclosure would be detrimental to the public interest. The House of Lords held

100 Ellis v. Home Office, [1953] 2 All E.R. 149, at 153, [1953] 2 Q.B. 135, at 143.

101 [1942] A.C. 624, [1942] 1 All E.R. 587 (H.L.).

that the affidavit was conclusive. The court accepted the minister's reasons and refused either to question the sufficiency of those reasons, or to examine the documents to determine the validity of the reasons given.

Duncan dealt with experimental submarine plans and was decided in the midst of World War II. These facts may assist in understanding the timidity of the court and its refusal to challenge the decision of a member of the Cabinet. However, Duncan was to have an unfortunate effect in later cases. As well as declaring a minister's claim of privilege to be unreviewable, Duncan set out a problematical test for determining whether the public interest required that documents be withheld from production. A document could be withheld because of its contents, or because it belonged to a class of documents that must be withheld in the public interest, regardless of the contents of the particular document sought.¹⁰² An example of such a class might be internal communications between civil servants: the candour of such communications might suffer if they were disclosed.

In Canada and England, adherence to the rules set out in Duncan resulted in some apparently unjust court decisions. Murray v. Murray,¹⁰³ for example, was a 1947 divorce case in British Columbia. Both husband

102 Id., at 632 (A.C.), 592 (All E.R.) per Viscount Simon L.C.

103 [1947] 3 D.L.R. 236 (B.C.S.C.).

and wife wanted the divorce. The husband admitted committing adultery and contracting venereal disease from a woman other than his wife. Admission of adultery is not enough for divorce, and in order to prove to the court that adultery had in fact taken place, and that grounds for a divorce existed, a subpoena was issued to the person in charge of the records of the provincial health office dealing with the treatment of venereal disease. It was requested that the husband's health records be put in evidence, and the husband consented to this in writing. The Minister of Health claimed Crown privilege and refused to allow the civil servant to produce the records or testify. It was claimed that this class of documents should not be produced in court, even with the consent of the person involved. The Minister indicated that the free flow of information to the department might be adversely affected and this would be contrary to the public interest. The court accepted the Minister's claim for Crown privilege without looking at the particular documents in question. The principles set out in Duncan v. Cammell, Laird & Co. were followed: the government-held information was not produced. The proof necessary to the granting of the divorce, which both parties wanted, was not forthcoming.

In Ellis v. Home Office¹⁰⁴ in 1953, the English Court of Appeal allowed a blanket claim of privilege for police and medical records. A prisoner had sued the Home Office for negligence in allowing him to be injured

104 [1953] 2 Q.B., [1953] 2 All E.R. 149.

by a chronically violent fellow inmate. The three judges hearing the appeal stated how "unfortunate" it was that the injured plaintiff was denied the evidence necessary to prove his case, but a ministerial claim of privilege was to be considered final and conclusive. The injured prisoner lost.

A similar situation arose in 1968 in Conway v. Rimmer;¹⁰⁵ however, the judicial reluctance to reach unpalatable decisions increased so that the Duncan doctrine was overthrown. The House of Lords denied that a minister's objection should be treated as final. The wartime circumstances and unnecessary breadth of the rule in Duncan were noted in support of the rejection of a claim of privilege. Routine internal police reports were requested by a police constable in an action against his superior for malicious prosecution. Though it was conceded that the "class of documents" category persisted as a legitimate subject matter for a claim to privilege, such routine reports could not be brought within it, without the minister's showing special reasons for withholding them. The adequacy of such reasons was left to the discretion of the judge who was charged with the duty of weighing the public interest in secrecy, as expressed by the minister, against the prejudice to the litigants. Lord Reid said:

105 [1968] A.C. 910, [1968] 1 All E.R. 874.

[I]f the Minister's reasons are of a character which judicial experience is not competent to weigh, then the Minister's view must prevail. But experience has shown that reasons given ... are often not of that character. 106

Most important, the principle was firmly established that documents for which privilege is claimed can be inspected by a judge to determine the validity of a claim for secrecy "in the public interest."

The Canadian jurisprudence in the period prior to 1968 indicated some ambivalence to the Duncan decision.

In 1954, the Supreme Court of Canada in R. v. Snider¹⁰⁷ held that a minister's affidavit was not conclusive to prevent the production of income tax returns. The Court exercised its discretion to examine the minister's decision, and concluded that the taxpayer's concern for the secrecy of the information he provides was outweighed by the demands that justice be done in this, a criminal case. Duncan was distinguished on the grounds that it was a civil case.

In 1955, Marriott, Senior Master of the Ontario High Court, noted that Crown privilege was not as broad in scope in Ontario as it was then in

106 Id., at 952 (A.C.), 888 (All E.R.); however, Lord Upjohn noted at 993 (A.C.), 914 (All E.R.) that documents relating to the security of the state might be an example of documents in a class that requires protection from disclosure.

107 Supra note 92.

England, and cited Snider as authority.¹⁰⁸ Marriott stated that it was the minister's place to state whether or not a public interest would be endangered by the disclosure of documents. The existence of such a public interest could not be questioned by the courts. However, the courts had the authority to determine whether the public interest as stated by the minister was important enough to justify the withholding of government information from the courts.

The impact of Marriott's statements of law was undercut by the actual decision in the case. This was one of what have been called the "candour cases." Crown privilege was claimed on the basis that internal government communications had been requested and if they were revealed, the candour of such communications between civil servants would suffer in the future. In 1955, Mr. L.H. Tong had applied to the Department of Citizenship and Immigration for the admission to Canada of his son, Lew Fun Chaue. The Department refused the application on the ground that it was not satisfied with the identity of the alleged son. In order to appeal the decision, Mr. Tong's lawyer requested copies of the information on which the department based its decision. The documents were refused on the basis of Crown privilege. The High Court of Justice upheld the claim of privilege and the documents were not produced. Marriott felt that the minister's

108 Re Lew Fun Chaue, [1955] O.W.N. 821.

claim on the ground of candour within government could not be challenged by the court.¹⁰⁹

Privilege was claimed over a further class of documents on the basis that the candour of sources of information outside government would be endangered. The High Court looked more closely at this claim than the claim relating to internal government communications, but in the final result, the documents which the father needed to launch his appeal were kept secret.

109 Id., at 823. Marriott first quoted Cameron J. in Reese v. The Queen, [1955] Ex. C.R. 187, at 197:

It is my opinion, therefore, that even if the prerogative of the Crown in Canada in this regard, and in civil actions in which the Crown is a party, is not as absolute as it is in England, there is a public interest which requires that inter-departmental communications between public officials should not be produced when the head of the department has in valid form objected to their production on the ground that they belong to a particular class of documents which it is not in the public interest to disclose. There is nothing novel in upholding such an objection for as far as I am aware it has been the constant practice in the Canadian courts to refuse to order disclosure of documents in such cases.

Marriott then went on to say:

The Minister in this case has not specifically referred to departmental documents in his affidavits but as they are included in the subpoenas it must be inferred that they are included in his objection. In other respects it will be noted that the objection is in valid form authorized by the cases when reasons are not given. Therefore, in my opinion, keeping in mind the nature of the proceedings in question, I think his objection should be held to be conclusive.

In 1972, privilege for "classes" of documents was again dealt with.

The Federal Court of Canada refused to allow a claim for Crown privilege based on the need for confidentiality of internal government

communication¹¹⁰ and quoted Lord Parker C.J. in R. v. Lewes Justices:

The first thing that is clear from Conway v. Rimmer ..., is that what was always looked upon as the sanctity of the certificate of the Minister, has gone. Secondly, it is clear that privilege can no longer be claimed alone, as it were, on the grounds so often put forward in these cases, that unless privilege is upheld, no one will give a frank, honest or full reply to a question or make a full report. 111

A licensed trustee in bankruptcy had had a restriction placed on his licence, and the government refused to lift the restriction. This decision was based on a report of the Superintendent of Bankruptcy, addressed to John Turner, the then Registrar General of Canada. The trustee in bankruptcy asked to see the report in order to prepare his case to have his licence restriction removed.

The report was refused on the ground of Crown privilege. It was claimed that communications between the Superintendent of Bankruptcy and the minister formed a class of documents which should not be disclosed in the public interest, and that the "candour" and "completeness" of all

110 Blais v. Andras, [1972] F.C.R. 958, at 964, (1973), 30 D.L.R. (3d) 287, at 292. This case was subject to the Federal Court Act, R.S.C. 1970, c. 10 (2d Supp.) s. 41(1); but was decided essentially on common law principles.

111 [1972] 1 Q.B. 232, at 238, [1971] 2 All E.R. 1126, at 1130.

such documents would be prejudiced if any of them were made public. On the facts of the case, however, the claim for Crown privilege could not be supported, and the documents were ordered to be disclosed.

Perhaps the most dramatic example of the court's rejection of a claim for Crown privilege has occurred in the case of Sankey v. Whitlam et al.¹¹² The Australian High Court rejected a claim of Crown privilege and ordered production of materials including excerpts from Cabinet documents and minutes. The privilege claim arose in the context of committal proceedings arising from information laid by a private citizen against the former Prime Minister and three former ministers of the Crown. It was alleged, in part, that the defendants had committed the common law offence of conspiracy to do an unlawful act with respect to substantial borrowings undertaken by the Australian government.

In short, the courts at present are inspecting documents and deciding on a case-by-case basis whether the public interest requires suppression of the information being sought. The extent to which courts will challenge a minister's affidavit is still not perfectly clear, however.

112 (1978) 53 A.L.J.R. 11.

c) Present Law and Proposals for Reform

The Ontario Law Reform Commission, in its Report on the Law of Evidence,¹¹³ recommends that the basis for executive privilege be clarified by statute. In its view, national and provincial security, federal-provincial relations and Cabinet confidences should be grounds for an unreviewable claim of privilege. To mitigate this extension of executive privilege, the Commission proposed that objections be made by the Cabinet collectively rather than by a single minister. The Law Reform Commission of Canada, however, proposes a more far-reaching change in the law in the direction of confining privilege. Section 43 of the Draft Evidence Code clearly allocates to the judiciary the responsibility of testing all such claims and creates a procedure for the direct referral of claims to the Chief Justice of Canada in the case of state secrets.¹¹⁴ This represents a change from the position established by the Federal Court Act making objections based on injury to international relations, national defence or security, federal/provincial relations, and Cabinet confidences unreviewable.

In sum, the Ontario law relating to Crown privilege appears to be as follows: Crown privilege may be invoked to deny production of information in court proceedings, if it is in the public interest that

113 Ontario Law Reform Commission, Report on the Law of Evidence (Toronto: Ministry of the Attorney General, 1976) at 232.

114 Report on Evidence (Ottawa: Law Reform Commission of Canada, 1975).

the information sought should not be produced. Once the claim has been made, the judiciary has the authority to inspect any documents in question, in order to determine whether the public interest in keeping the documents secret overrides the public interest in the administration of justice which would require the documents to be produced. There is a possibility that some documents may fall into a class that would require them to be kept secret; there the onus is on the party asserting Crown privilege to establish the claim.

3. Civil Litigation

a) Discovery Against the Ontario Government

As a party to civil litigation, the Crown will be subject to producing documents or information on discovery. The Proceedings Against the Crown Act,¹¹⁵ however, allows the Crown to "refuse to produce a document or to answer a question on the ground that the production or answer would be injurious to the public interest" (emphasis added). This section imports the notion of Crown privilege into the discovery process.¹¹⁶ As was noted in the discussion of Crown privilege, a

115 R.S.O. 1970, c. 365, s. 12(a). Section 12(b) allows the Deputy Attorney General to designate the person who attends to be examined for discovery.

116 See Ellis v. Home Office, supra note 100, in which a similar English statute was said to have this effect.

successful assertion of Crown privilege by the government can completely frustrate a person who is trying to sue the government: access to the very documents necessary for the proof of the case may be denied.

b) Discovery Rules and
Freedom of Information

The integration of discovery rules with an information access policy could pose some problems. In Australia, the discovery rules are incorporated into the Freedom of Information Bill, 1978 as an exemption to disclosure.¹¹⁷ This makes Crown privilege part of the freedom of information scheme.

Crown privilege appears to be an inappropriate concept to be incorporated into an information access scheme. The test normally used in deciding whether a claim of Crown privilege will justify non-disclosure of documents is whether the public interest claimed by the minister for secrecy overrides the public interest in the courts' ability to administer justice on the basis of all relevant facts. This is not an

¹¹⁷ The Attorney General may, by certificate, declare a document or class of documents to be exempt from disclosure under the FOIA where he is satisfied the disclosure "would be contrary to the public interest on a particular ground, being a ground that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding" (s. 36(1)). Any certificate given by the Attorney General under this section is reviewable by the Administrative Appeals Tribunal, and the certificate may be overturned (s. 37(2)).

appropriate test for deciding whether an information access request is to be granted, since the major balancing interest in favour of disclosure would not be present. An information access request is not made for the purpose of administration of justice in the courts.

Assume, for example, a choice must be made between releasing some income tax records and not releasing them, with the possible result being that a person might be jailed unjustly, as in R. v. Snider.¹¹⁸ Here, the administration of justice can be seen as a very real public interest in competition with the public interest in maintaining the confidentiality of income tax records.

Where is the public interest in the administration of justice found in an information request, possibly made out of idle curiosity? How does the axiom that an informed electorate benefits parliamentary democracy square with the possibilities of more immediate injuries to the public interest raised by a government seeking to avoid disclosure? When courts make decisions on issues of Crown privilege, they do so in the contexts of particular cases in which the competing public interests are more immediate and readily discernible. Unless the motive for an access request were brought into play, that immediacy would not be present on both sides of a claim for exemption from disclosure under freedom of information legislation. An exemption for Crown privilege

118 R. v. Snider, supra note 92.

might result in a general exemption from disclosure which the government could claim "in the public interest." There is a danger that such an exemption would cripple any new information access scheme, and a vague exemption would in all likelihood encourage appeals and delays.

In some areas, the concept of Crown privilege can be seen as too broad to be useful in an information access scheme. In other areas, the concept protects less information than is normally protected by exemptions to freedom of information legislation. For example, in at least two cases, income tax returns of persons not parties to actions have been made public in court even though attempts were made to keep them secret by claims of Crown privilege.¹¹⁹ Such returns are not normally available to the public under information access schemes.

A possible solution to the problem of integrating discovery rules or Crown privilege with an information access scheme might be to adjust the discovery rules so that anything available to the general public through an information access request would be available to parties in litigation with the Crown. This would keep the general concept of "in the public interest" from becoming an exemption to information access, but would not substantially change the law of Crown

119 Id.; M.N.R. v. Huron Steel Fabricators (London) Ltd., (1973), 31 D.L.R. (3d) 110.

privilege,¹²⁰ or discovery. Such a formulation would ensure that all information available under an access scheme would be produced on discovery. A person involved in litigation with the Crown may have a greater interest in certain government-held information than the general public, and the court would be able to recognize and give effect to that special interest. The law respecting Crown privilege, which is now under consideration by the Ontario and Canada Law Reform Commissions, would not be rewritten by such a change to The Proceedings Against the Crown Act. The change would be procedural, reflecting a new element in the general availability of government information.

c) Statutory Non-Compellability
and Court Proceedings

Another major area of concern is the ability of government officials, in many instances, to refuse to testify or provide evidence where the

120 An amendment to The Proceedings Against the Crown Act might read as follows:

Nothing will be refused in discovery that would be available if it were requested under the provisions of The Freedom of Information Act. Matters falling within the exemptions under that Act may form the basis of a claim of privilege by the appropriate Minister, but the claim of privilege will be determined by a judge as to whether it is in the public interest to withhold the information, and The Freedom of Information Act will not in any way be binding upon the judge ruling upon the claim of privilege. A judge may order the material that is the subject for decision under this section to be produced for his inspection.

Crown is not a party to the litigation. Crown privilege can be invoked to justify the refusal of government employees to testify in civil litigation proceedings where the Crown is not a party, but many statutes also expressly provide that government employees may refuse to be called as witnesses.

One factor that must be borne in mind in this discussion is that, unlike a claim of Crown privilege, a refusal to testify based on a statute section is not subject to judicial review.

A survey of Ontario statutes restricting the compellability or competence of government officials in judicial or administrative proceedings reveals the following categories:

Group A: Monitoring or Testing Statutes:

The Building Code Act, 1974, S.O. 1974, c. 74, s. 22(3)

The Construction Safety Act, 1973, S.O. 1973, c. 47, s. 8(3)

The Employment Standards Act, 1974, S.O. 1974, c. 112, s. 45(3), (4)

The Energy Act, 1971, S.O. 1971, c. 44, s. 6(2)

The Industrial Safety Act, 1971, S.O. 1971, c. 43, s. 13(3)

The Petroleum Resources Act, 1971, S.O. 1971, c. 94, s. 5(2)

The Workmen's Compensation Act, R.S.O. 1970, c. 505, ss. 81a(1), (2), 99

The Environmental Assessment Act, 1975, S.O. 1975, c. 69, ss. 21, 28(2)

The Environmental Protection Act, 1971, S.O. 1971, c. 86, s. 87(2)

Group B: Trade Regulation Statutes:

The Business Practices Act, 1974, S.O. 1974, c. 131, s. 14(2)

The Collection Agencies Act, R.S.O. 1970, c. 71, s. 266(2)

The Consumer Protection Act, R.S.O. 1970, c. 82, s. 29a(2)
The Consumer Reporting Act, 1973, S.O. 1973, c. 97, s. 18(2)
The Denture Therapists Act, 1974, S.O. 1974, c. 34, s. 22(2)
The Funeral Services Act, 1976, S.O. 1976, c. 83, s. 32(2)
The Health Disciplines Act, 1974, S.O. 1974, c. 47, ss. 41(2),
65(2), 111(2), 137(2)
The Insurance Act, R.S.O. 1970, c. 224, s. 90
The Law Society Act, R.S.O. 1970, c. 238, s. 13(2)
The Liquor Licence Act, 1975, S.O. 1975, c. 40, s. 25(2)
The Mortgage Brokers Act, R.S.O. 1970, c. 278, s. 256(2)
The Paperback and Periodical Distributors Act, 1971, S.O. 1971,
c. 82, s. 12(2)
The Pyramidic Sales Act, 1972, S.O. 1972, c. 57, s. 19(2)
The Real Estate and Business Brokers Act, R.S.O. 1970, c. 401,
s. 276(2)
The Travel Industry Act, 1974, S.O. 1974, c. 115, s. 21(2)
The Motor Vehicle Dealers Act, R.S.O. 1970, c. 475, s. 256(2)

Group C: Labour Statutes:

The Colleges Collective Bargaining Act, 1975, S.O. 1975, c. 74,
s. 58
The Crown Employees Collective Bargaining Act, 1972, S.O. 1972,
c. 67, ss. 47, 49
The Labour Relations Act, R.S.O. 1970, c. 232, ss. 98, 100(4), (5)
The School Board and Teachers Collective Negotiations Act, 1975,
S.O. 1975, c. 72, ss. 62, 82

Group D: Taxing Statutes:

The Gasoline Tax Act, 1973, S.O. 1973, c. 99, s. 30(2), (3)
The Gift Tax Act, 1972, S.O. 1972, c. 12, s. 52(2), (3)
The Land Speculation Tax Act, 1974, S.O. 1974, c. 17, s. 18(2), (3)

Group E: Administrative Tribunal Statutes:

The Ontario Energy Board Act, R.S.O. 1970, c. 312, ss. 6(1), 49(3),
56
The Ontario Municipal Board Act, R.S.O. 1970, c. 323, s. 31

Group F: Other Statutes:

The Education Act, 1974, S.O. 1974, c. 109, s. 231(2), (9)

The Legal Aid Act, R.S.O. 1970, c. 239, s. 25

The Ombudsman Act, 1975, S.O. 1975, c. 42, ss. 20(6), 25(2)

The Ontario Guaranteed Annual Income Act, 1974, S.O. 1974, c. 58, s. 10(3)

The majority of the statutory non-compellability sections are restricted in their operation to civil litigation. The monitoring or testing acts, trade regulation acts, and taxing acts generally fall into this category. The effect of this approach is to deny the use of government information in civil cases to which the government is not a party, while at the same time allowing any government body to compel a civil servant to testify in proceedings under any other act or in prosecutions under the Criminal Code or provincial statutes. The monitoring or testing acts only designate inspectors and those who perform tests as being non-compellable in civil proceedings, but the trade regulation acts and taxing acts state that all employees working in connection with the in question are not to be compelled to give evidence in civil proceedings. The reasoning behind these sections appears to be the same as the reasoning behind the general standard form secrecy sections. Those persons who gather information on behalf of the government and who are given powers of inspection or investigation should be confined in their use of the information so collected. Such information should be used only for the purposes for which it was originally collected.¹²¹

121 See Ch. II, C. 2., "Standard Form Secrecy," supra.

The statute sections that were drafted to implement the McRuer Report recommendations, based on the above reasoning, would be in potential conflict with any general freedom of information statute that might be enacted. In any event, these sections do not fully accomplish the McRuer Report recommendations in that, as noted above, other government bodies may still call on civil servants to testify in prosecutions and investigations. It is only members of the private sector, in civil litigation, that are denied the testimony of government employees.

Several senior government counsel were interviewed regarding the rationale and justification for existing non-compellability sections in the statutes of Ontario as well as present government practice regarding those existing sections. Counsel were interviewed from the following:

- . Ministry of Consumer and Commercial Relations
- . Ministry of Revenue
- . Ministry of the Environment
- . Ontario Energy Board
- . Ministry of Labour
- . Ministry of Health.

Counsel interviewed were generally in favour of government employees being non-compellable as witnesses in court (with the exception of counsel for the Ontario Energy Board, who was essentially neutral on the issue). One counsel in the Ministry of Labour went so far as to approve not only non-compellability, but an increase in declaring

employees incompetent to give testimony. This would remove any discretion to testify and relieve government personnel of the burden of deciding in individual cases whether to give evidence.

Some common themes were sounded in the interviews conducted:

1) Information collected by government is in many cases of a highly confidential nature, either because of its commercial value or because it deals with highly personal and private matters. Allowing these matters to be brought out in open court would interfere with the privacy and civil rights of those whom the information concerned. This would be contrary to the principles enunciated in the McRuer Report, that information collected by government pursuant to powers of investigation and inspection should be restricted in its use to those purposes for which it was collected.

This concern may well be legitimate. However, the non-compellability sections block access to the testimony of civil servants concerning a great deal more than just confidential information about the private sector. The rule appears to be too wide in its application. Non-compellability sections allow Ontario civil servants to refuse to testify about absolutely anything.

It might be possible to protect confidential information from exposure in the courts while still allowing government employees to testify about some matters. For example, assume a factory floor gave out under

the weight of machinery. An injured workman might wish to sue his employer in negligence. An inspector under The Industrial Safety Act¹²² who recently inspected the site may have evidence in his report that would allow the workman to prove his case. The fact that a floor was not strong enough to support the machinery placed on it and the employer had been thus informed by the safety inspector does not seem to be private or commercially valuable confidential information. Under the Act, however, the inspector cannot be compelled to give evidence.¹²³

2) The second major theme to come out of the interview process was expressed by representatives of the Ministries of Consumer and Commercial Relations, Revenue, Environment, and Health. All strongly emphasized that the repeal or weakening of the present non-compellability sections could result in the loss of candid and truthful information being supplied to the ministries. If information supplied were made available in civil court proceedings, the relationship of trust would be destroyed. Candid and truthful information exchanges are a necessity for the efficient and effective operation of the ministries. One senior counsel in the Ministry of the Environment stated bluntly that, practically speaking, the Ministry could not rely upon the threat of prosecution to elicit the information which it requires.¹²⁴

122 The Industrial Safety Act, 1971, S.O. 1971, c. 43.

123 Id., s. 13(3).

124 This argument was raised in the United States during the debate over the Freedom of Information Act. Generally speaking, it appears that this fear has not materialized.

3) A third major concern of those interviewed was the administrative burden involved in allowing civil servants to testify in civil proceedings. The efficiency of the ministry's operation would be adversely affected if the staff were constantly required to be away from their administrative duties, testifying in court. The result would be an unwarranted expenditure of the ministry's time and money.

The public has an interest in the efficient and economical operation of government, but the public also has an interest in the just resolution of disputes, based on all available relevant facts. While it may be appropriate for the costs of increased access to government information to be spread over the population generally, it would seem that the cost burden relating to civil servants' appearances as witnesses in civil litigation should be borne by the litigants themselves. Witness fees could be established in a schedule, and reviewed from time to time, based on prevailing fees being charged by private sector "expert witnesses." Such fees would be high enough to discourage litigants from calling civil servants to testify unless relevant testimony would be forthcoming. Perhaps a penalty, similar to that now imposed in relation to the unnecessary calling of doctors to appear in court,¹²⁵ might be imposed by the judge where a civil servant is unnecessarily required to give evidence viva voce. This could be achieved by a minor amendment to the Ontario Evidence Act.

125 This is established by The Evidence Act, R.S.O. 1970, c. 151, s. 52(4).

d) Statutory Non-Compellability
and Freedom of Information

The integration of any new information access scheme with existing statutory non-compellability sections poses problems. If the sections are left as they are, the matters about which a civil servant can refuse to testify would likely include some which would be properly available to members of the general public under the information access scheme. An example might be a government report on the possible environmental effects of a new chemical, and the Ministry of the Environment manual of standards setting out what the Ministry considers "safe" or "acceptable" levels of the new chemical. The report and manual might be very helpful to a farmer suing a company for damages to his fields; in fact, they might well establish negligent behaviour on the part of the company.

Assume the manual and report do not refer to any secret process or particular company. It is conceivable that under an information access scheme, the farmer might, as a member of the public, be entitled to copies of the manual and report. In order to submit these documents as evidence in the lawsuit, the farmer would have to prove that they are actually Ministry of the Environment documents. To do this, the testimony of an Environment officer might be required. Since the testimony required would not relate to any specific emission, but merely to the authenticity of the documents, the Environment official may refuse to testify on the basis of section 87(2) of The Environmental

Protection Act.¹²⁶ The farmer would be left in the position of possessing a publically available document, but not being able to use it in court.

A possible solution to this problem would be to enact a general exception to the non-compellability sections to the effect that notwithstanding any other act, government employees may be compelled to testify in relation to any matters properly disclosable under the freedom of information scheme. This would ensure that anything available to members of the public, generally, would be available for use in court as evidence. The existing non-compellability provisions would continue to be operative relative to any information kept secret under the information access scheme.

Carefully drafted exemptions to the information access scheme could be used to allay the concern of government officials that confidential and private information not be made public in court. Then the problem of the administrative burden of having civil servants constantly in court giving testimony would then have to be addressed. In some cases, this

126 S.O. 1971, c. 86:

Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony, other than testimony in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, in any civil suit or proceeding with regard to information obtained by him in the course of any survey, examination, test or inquiry under this Act or the regulations.

situation has been remedied by specific sections in existing legislation. For example, the presence of what purports to be the signature of the Registrar General of Ontario on a birth certificate is deemed by The Vital Statistics Act¹²⁷ to be sufficient proof that the document is indeed a birth certificate for purposes of use in court as evidence. This relieves the Registrar General or members of his staff from having to go to court constantly in order to establish the authenticity of birth certificates.

In many cases, it might be that the documents obtained under an access scheme in Ontario would be sufficient, and testimony by the civil servant providing the documents would be necessary only for the purpose of "proving" the document. Such documents could be made generally admissible as evidence in court by a new section in The Evidence Act,¹²⁸ similar to the existing section 30, which permits "public or official documents" to be admissible if "certified under the hand of the proper officer." Both parties should of course be able to subpoena the civil servant, to further elucidate on the documents or to be cross-examined where necessary. A penalty clause might be invoked where the testimony of the civil servant does not contain relevant information which was unavailable in the documents.

127 R.S.O. 1970, c. 483, s. 41(1).

128 R.S.O. 1970, c. 151.

Easing the admissibility of documents, in combination with high witness fees for civil servants and a penalty for unnecessary testimony might substantially reduce the administrative burden which is feared if more government information is made available to the courts.

4. Prosecutions Under the
Criminal Code of Canada
and Provincial Acts

The British North America Act, 1867, gives the federal government authority over the criminal law of the country.¹²⁹ The provinces, however, are charged with the responsibility for the administration of justice. The Criminal Code¹³⁰ sets out those things which are to be considered crimes in Canada, while the major responsibility for enforcing the Criminal Code falls upon the provincial Ministries of the Attorneys General and the provincial and municipal police forces.

Provincial authorities dealing with the Criminal Code must follow its provisions for trial procedures; where the Code is silent, provincial agencies institute their own procedures in order to accomplish the stated end. A great deal of information is collected pursuant to the enforcement of the Criminal Code and the Code is generally silent

¹²⁹ Section 91.

¹³⁰ R.S.C. 1970, c. C-34.

regarding the handling of such information. Therefore, access to information held by law enforcement agencies, with the exception of federal law enforcement agencies such as the Royal Canadian Mounted Police, can be seen as a provincial responsibility, even when the matter being dealt with relates to a Criminal Code offence.

Provincial policies relating to information access in criminal matters affect the entire law enforcement system. When a provincial offence is prosecuted, it is dealt with under procedures outlined in The Summary Convictions Act.¹³¹ Section 3 of the Act incorporates by reference the procedures from the Criminal Code, and the policies supplementing the Criminal Code procedures are apparently the same whether the prosecution is for a crime or a provincial offence.¹³²

At present in Ontario, there is no right for the general public to gain access to law enforcement records except, of course, matters raised in open court. The person accused of having committed an offence is little better off. The right of the accused to "discover" the case being made against him is presently under examination by the Law Reform Commission of Canada, in consultation with the provincial Attorneys General. What follows is a discussion of the present situation in Canada regarding

131 R.S.O. 1970, c. 450.

132 In the United States the question of access to information held by law enforcement agencies was the subject of considerable debate, and when the 1966 Freedom of Information Act was amended in 1974, this was one of the major areas revamped.

criminal discovery, and is taken mainly from a working paper published by the Law Reform Commission of Canada.¹³³

a) The Extent of Present Discovery
Afforded the Accused

The Canadian Criminal Code does not provide for a great deal of discovery of the prosecution's case. In cases of treason (s. 46 of the Code), a list of potential witnesses and jurors and their addresses must be given to the accused prior to arraignment (s. 532 of the Code). Other provisions of the Code permit the accused to obtain the release of Crown exhibits for testing (s. 531, s. 533) and allow for inspection of a statement made at a preliminary hearing (s. 531(b)).

What has arguably functioned as a form of discovery to date is the preliminary hearing. Though originally intended as a check on unjustified pre-trial detention, it has evolved so as to "... serve the more general purpose of reviewing the evidence of a charge to determine whether it was sufficient to warrant the accused standing trial."¹³⁴ The Law Reform Commission has pointed out that both present laws and present practices with respect to preliminary hearings do not amount

133 Law Reform Commission of Canada, Discovery in Criminal Trials (Ottawa: Information Canada, 1974) Part 2, Study Paper #4, "Criminal Procedure - Discovery."

134 Id. at 1.

to an adequate approximation of a discovery system. There are essentially two reasons for the inadequacy of the preliminary hearing as a form of discovery:

1) In Law: At the preliminary hearing, the prosecution has only to lead sufficient evidence to justify the accused standing trial on the given charge. The prosecution need not call all of its witnesses nor present all of its evidence. Section 475(1) (a) of the Code sets out the standard for committal for trial as being "... evidence ... sufficient to put the accused on trial." Case law has stated that on a preliminary inquiry the Crown does not have to prove the guilt of the accused, but merely show that he is probably guilty and that there is sufficient evidence to commit for trial.¹³⁵ The accused thus has no legal right to discover all of the case being made against him.

2) In Practice: Information from Statistics Canada, 1969, indicates that only 5% of all criminal cases were tried by either judge alone or judge and jury -- those cases in which a "preliminary" is available. About 95% of all criminal cases, then, were tried in such a manner as to preclude the possibility of a preliminary hearing. A survey of disclosure practices in Montreal, Toronto and Vancouver revealed a great variance in procedure among Crown prosecutors. Some Crown Attorneys would release the names and addresses of witnesses whom they

135 R. v. Cowden (1947), 90 C.C.C. 101; R. v. Spacinsky (1955), 31 C.R.N.S. 252.

intended to call at trial; others would not. Some would release the statements of witnesses whom they did not intend to call; others would not. Some stated that they would reveal information to the defence that might tend to help the case of the defence; others would not do so. In essence some accused were given a form of discovery; others were not.

b) Recommendations of the
Law Reform Commission of Canada

The Law Reform Commission has suggested that a uniform formal discovery procedure should apply in all criminal cases. The prosecution should first supply the accused on or before his first court appearance with a standard form discovery statement. This statement would contain the facts, information and material to be presented to the court upon a plea of guilty. We can call this step in the process pre-plea discovery. The following material should be contained in the pre-discovery statement:

- 1) the charges against the accused;
- 2) the narrative of facts that will establish a finding of guilt;
- 3) the identity of witnesses who are included in such a narrative; and
- 4) an indication by the Crown as to whether the proceedings in question will be summary or go by way of indictment. 136

136 Further elaboration of material to be included in the pre-plea discovery statement can be found in Working Paper #4, supra note 133, at 40.

If the accused should plead not guilty after pre-plea discovery, the court would then require the representatives of the prosecution and defence before the court to agree upon a date, time and place for a discovery meeting. At this meeting a date would be set for a discovery hearing -- to take place within three weeks of the discovery meeting. At the discovery meeting the name, address and occupation of each witness would be disclosed to the defence. The name, address, and occupation of all other persons who provided information to investigation authorities would also be disclosed to the accused at this point, regardless of whether the Crown considered the information so provided as relevant or admissible at trial.

The three-week period between the discovery meeting and the discovery hearing would allow the defence an opportunity to conduct further investigation, if necessary. This investigation would naturally centre on material or information disclosed at the discovery meeting. There would also be an opportunity to conduct informal interviews of disclosed witnesses.

The discovery hearing would be presided over by a judge, who would rule on any disputes as to whether legal discovery requirements have been, or ought to be, carried out. At the completion of the discovery hearing the defence would be entitled to present a motion that there is no evidence to warrant placing the accused on trial.

The presiding judge, where warranted, would commit the accused for trial. Implementation of the discovery hearing proposal would naturally dictate the abolition of the present form of the preliminary inquiry. Committal for trial would be automatic after the discovery hearing, subject, of course, to the defence successfully raising a motion of no evidence.

In summary, the law in the area of discovery as it relates to prosecutions in Ontario is in an unsatisfactory state at the moment. Since the federal and provincial governments are involved in a joint study of the entire area, it is suggested that this area is not one in which this Commission should make recommendations.

Access to law enforcement records generally has been dealt with in a separate study undertaken for the Commission.¹³⁷ Perhaps any exemption proposed in this field could include an acknowledgement that discovery in prosecutions is a distinct and peculiar subject outside the scope of operation of any general access legislation. The schemes that have been put into place in other jurisdictions for the purpose of facilitating access by individuals to files containing information about themselves make exception for those files relating to ongoing prosecution investigations. General information access schemes,

137 M. Brown et al., Privacy and Personal Data Protection (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication, forthcoming).

such as those in place in the United States, exempt such files from mandatory disclosure as well.

F. Classification of Documents and Public Access

In Ontario there is no formal classification system for restricted documents or information. Formal restrictions on public access to government documents and information are found in many acts and regulations of the province, but there is no apparent system or overall policy governing such enactments (See Appendix A: "Provisions in the Statutes and Regulations of Ontario Respecting the Non-disclosure of Government Information").

Decisions as to what government information may be released to the public generally fall within ministerial discretion. Some examples follow:

1) Administrative Manuals: Various degrees of public access to documents and information are set out in manuals which govern the day-to-day activities of civil servants, one example being the Ministry of Correctional Services Standards and Procedures Manual (February, 1976; see particularly section A-7, pages 1-10). It sets out what kinds of information are to be given to lawyers, family members of inmates, friends, members of the legislature, press representatives, credit bureaus, etc. These standards and procedures are administrative policy,

not law. The content of the manuals themselves is usually considered confidential, and the manuals are not available to the public. The Secret Law chapter of another research publication¹³⁸ prepared for the Commission deals with manuals and similar matters in detail.

2) Archives Access: The Archives Act, R.S.O. 1970, c. 28, provides that all original documents produced by government agencies must be delivered to the Archives within 20 years of their ceasing to be in current use (s. 3), and that no government documents are to be destroyed without the permission of the Archivist of Ontario (s. 6). Cabinet is given authority to make regulations designating what "shall be deemed to be public archives" and what shall be "accessible for purposes of official, scientific and historical research" (s. 8(c), (d)). There are no regulations under the Act. At present, each individual minister determines what portions of the Archives relating to his ministry are public and what length of time the other material is to be kept from public view. The rule of thumb used in Ontario is borrowed from the British and federal archives procedures. Documents are public only after 30 years in the Archives. Ministries vary this; some documents are declared public from the moment they arrive, while others (for example, from the Ministry of the Solicitor General) are to be kept secret in perpetuity.

138 L. Fox, op.cit., supra note 1.

3) Statistical Files: Ontario has two listings of its statistical files, a Catalogue and an Index. The Catalogue lists a great number of the government's statistical files and is not available to the public. Each entry includes an accessibility designation. These range from "available to the public" to "classified," and include such designations as "confidential within ministry" and "confidential within government." The ministry which controls the file determines its accessibility. The Index, which is available to the public, contains only about one half of the entries found in the Catalogue. Both the Catalogue and the Index are put out by the Treasury Ministry. Even the Catalogue is acknowledged to be a very incomplete listing of the statistical files held by the Ontario government. A separate paper has been done for the Commission concerning the Ontario government's statistical policies and practices.¹³⁹

G. International Law and Practice

Information supplied to one government by the government of another state appears to have a different status from documents or information obtained from other sources. Foreign relations become involved. This is an area long acknowledged to be completely in the hands of the executive of each country. In R. v. Rose, it was stated that

139 D.H. Flaherty, Research and Statistical Uses of Ontario Government Personal Data (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication 5, 1979).

"International Law creates a presumption of law that documents coming from an Embassy have a diplomatic character and that every Court of Justice must refuse to acknowledge jurisdiction or competence in regard to them."¹⁴⁰ If the government claims that the documents are of a diplomatic character, then the courts cannot order them to be produced, not for any purpose.

In Canada, it is clear that the federal government has a legal right to keep secret any documents originated by a foreign state. The provinces have no authority in the field of foreign relations. Issues and problems raised by Ontario's dealings with other countries or individual bordering states in the United States will not be dealt with here.

140 [1947] 3 D.L.R. 618, (1947), 88 C.C.C. 114 (Que. K.B.), at 646 (D.L.R.), 144 (C.C.C.) per Bissonnette J.

CHAPTER III

ACCESS TO GOVERNMENT INFORMATION

A. Introduction

Chapter II dealt with the extensive legal rights of government to keep information secret. Chapter III will examine the public's legal rights of access to government-held information. Access to government information in the context of hearings before provincial boards and tribunals has been dealt with in another Commission paper,¹⁴¹ and will not be dealt with here.

Any person who wishes to force the government to divulge information will find that his legal rights are extremely limited. Even when a clear legal right of access exists, it may not be possible to enforce that right. Many statutes of Ontario declare that information is to be made available to the public. However, compelling the government to comply with the law is a complex and difficult task. In many cases it may simply be impossible to force the government to carry out its legal duties. Similarly, the legislature possesses some legal powers

141 L. Fox, op.cit., supra note 1.

to force disclosure of government-held information, but their practical utility is limited as they are bound up with the political process. The Ombudsman, too, has some authority to force information from government personnel, but the Ombudsman's office is not particularly helpful, since his authority to give information to people outside government is restricted by statute.

There is little law relating to the transfer of information between branches and levels of government. This type of access to government information will be discussed briefly.

B. Government Information
Declared Public by Statute

Many statutes require government to make certain information available to the public. It may happen that a statute is not complied with, and supposedly public information is kept secret. In such circumstances, an application may be made to the Court for mandamus -- an order that the government fulfill its duty. Unfortunately, such court orders are not automatic but discretionary. A complex body of law has been built up surrounding orders of mandamus. The major obstacle to be overcome by an applicant is that of establishing a special interest over and above the interests of other members of the public. Curiosity is not enough of a special interest to give standing for an application for mandamus. This impediment, along with some other problems that

might arise in enforcing statutory rights, will be discussed below, but first the existing statutory framework will be described.

1. Description

Statute sections¹⁴² requiring information to be available to the public are very specific in wording and application. The secrecy sections in various statutes, on the other hand, are couched in broad, general terms. Relatively little information is declared public by law, while vast amounts of information are declared secret.

Of the roughly 500 public statutes presently in force in Ontario, approximately 75 contain provisions requiring information to be public.¹⁴³ Only three administrative boards are required to publish

142 Regulations made under various statutes were not examined for public information sections. Regulations are merely extensions of administrative practice and may be changed at any time at the whim of the Cabinet. Statutes, on the other hand, can only be changed by a full vote of the Assembly. Thus statute sections are not merely extensions of administrative practice.

143 This does not include requirements for Annual Reports to the legislature. At least 89 acts require agencies of government to file Annual Reports that are tabled in the legislature. Upon tabling, of course, the Reports become public documents. Annual Reports are required of agencies including various ministries, government funded institutions (e.g., Art Gallery of Ontario, University of Toronto), Crown Corporations (e.g., Ontario Housing Corporation), and administrative boards (e.g., The Workmen's Compensation Board). There are no legal requirements concerning the content of Annual Reports. Some Reports consist of one or two pages. A list of required Annual Reports is reproduced at Appendix J.

their decisions and summaries of reasons.¹⁴⁴ One board must make its decisions available for inspection.¹⁴⁵ Fewer than ten agencies must make their "orders" public. Of these, orders under The Business Practices Act,¹⁴⁶ The Employees Health and Safety Act,¹⁴⁷ and exemption orders under The Securities Act,¹⁴⁸ are the most notable. Approximately 15 acts provide for notices to the public when official plans, major municipal expenditures, or land are dealt with.

Apart from provisions requiring that court records,¹⁴⁹ statutes,¹⁵⁰ regulations,¹⁵¹ and proclamations of the Lieutenant Governor¹⁵² be made available to the public, the bulk of the remaining public information sections (approximately 35) require information about the private sector to be made available. Corporate filings,¹⁵³ information

144 The Compensation for Victims of Crime Act, 1971, S.O. 1971, c. 51; The Liquor Licence Act, 1975, S.O. 1975, c. 40; The Ministry of Consumer and Commercial Relations Act, R.S.O. 1970, c. 113 (re: Commercial Registration Appeal Tribunal).

145 The Ontario Highway Transport Board Act, R.S.O. 1970, c. 316.

146 The Business Practices Act, 1974, S.O. 1974, c. 139.

147 The Employees' Health and Safety Act, 1976, S.O. 1976, c. 79.

148 The Securities Act, R.S.O. 1970, c. 426.

149 The Judicature Act, R.S.O. 1970, c. 228.

150 The Statutes Act, R.S.O. 1970, c. 446.

151 The Regulations Act, R.S.O. 1970, c. 410.

152 The Official Notices Publication Act, R.S.O. 1970, c. 303.

153 The Corporations Information Act, 1976, S.O. 1976, c. 66.

about debtors with judgments against them,¹⁵⁴ etc., are to be made public.

The by-laws or rules of corporations controlling certain trades or professions are to be made public.¹⁵⁵ It is interesting to note, however, that of all the registration schemes operated pursuant to statutory authority, only two registers are required to be public -- psychologists and investors in a pyramidal sales scheme.¹⁵⁶

A survey of public information sections has been summarized below under the following headings:

- 1) Viewing of Public Documents
- 2) Publishing or Posting Notices of Public Interest
- 3) Compliance with Requests for Documents or Information
- 4) Municipal Records
- 5) Development Plans, etc.

Some acts appear in more than one list.

154 The Creditors' Relief Act, R.S.O. 1970, c. 97.

155 The Denture Therapists Act, 1974, S.O. 1974, c. 34; The Funeral Services Act, 1976, S.O. 1976, c. 83; The Law Society Act, R.S.O. 1970, c. 283; The Health Disciplines Act, 1974, S.O. 1974, c. 47.

156 The Psychologists Registration Act, R.S.O. 1970, c. 372; The Pyramidal Sales Act, 1972, S.O. 1972, c. 57. (Note: this act was repealed by S.O. 1978, c. 105, s. 1.)

1) Viewing of Public Documents

The Assessment Act, R.S.O. 1970, c. 32
. rolls

The Business Practices Act, 1974, S.O. 1974, s. 131
. assurances of voluntary compliance
. orders to cease unfair practices

The Corporations Information Act, 1976, S.O. 1976, c. 66
. basic corporate information filings

The Creditors' Relief Act, R.S.O. 1970, c. 97
. record of money collected under an execution

The Denture Therapists Act, 1974, S.O. 1974, c. 34
. by-laws

The Election Finances Reform Act, 1975, S.O. 1975, c. 12
. all documents filed

The Environmental Assessment Act, 1975, S.O. 1975, c. 69
. notice of, and inspection of assessment review

The Funeral Services Act, 1976, S.O. 1976, c. 83
. by-laws

The Health Disciplines Act, 1974, S.O. 1974, c. 47
. by-laws

The Judicature Act, R.S.O. 1970, c. 228
. court records, writs, judgments, etc.

The Juries Act, 1974, S.O. 1974, c. 63
. jury roll

The Law Society Act, R.S.O. 1970, c. 238
. rates

The Ontario Energy Board Act, R.S.O. 1970, c. 312
. report on rates, applications by Hydro

The Psychologists Registration Act, R.S.O. 1970, c. 372
. register of names of registrars

The Public Libraries Act, R.S.O. 1970, c. 381
. records, books, accounts and documents in possession of
the secretary of a board

The Pyramidical Sales Act, 1972, S.O. 1972, c. 57
· register of investors in pyramidical schemes

The Securities Act, R.S.O. 1970, c. 426
· reports and financial statements filed with the Commission

The Sheriffs Act, R.S.O. 1970, c. 434
· securities filed with the sheriff

The Small Claims Courts Act, R.S.O. 1970, c. 439
· record of money paid into court

The Statute Labour Act, R.S.O. 1970, c. 445
· statute labour book

The University of Toronto Act, 1971, S.O. 1971, c. 56
· by-laws of Governing Council

The Sir Wilfred Laurier University Act, 1973, S.O. 1973, c. 87
· by-laws of Governing Council

2) Publishing or Posting Notices
of Public Interest

The Abandoned Orchards Act, R.S.O. 1970, c. 1
· notice of diseased orchards

The Assessment Act, R.S.O. 1970, c. 32
· equalization factor

The Boundaries Act, R.S.O. 1970, c. 48
· decision on boundaries

The Colleges Collective Bargaining Act, 1975, S.O. 1975, c. 74
· fact-finder report if no agreement

The Compensation for Victims of Crime Act, 1971, S.O. 1971, c. 51
· summary of decisions and reasons

The Conservation Authorities Act, R.S.O. 1970, c. 78
· interference with cemetery

The Conservation Protection Bureau Act, R.S.O. 1970, c. 83
· educational information

The Credit Unions Act, 1976, S.O. 1976, c. 62
· Notice of dissolution of credit union

The Drainage Act, 1975, S.O. 1975, c. 79

- . notice re: drainage inspection and report to landowners

The Employees Health and Safety Act, 1976, S.O. 1976, c. 79

- . orders to employer
- . employer's safety record for the year (summary)

The Environmental Assessment Act, 1975, S.O. 1975, c. 69

- . notice of assessment review

The Expropriations Act, R.S.O. 1970, c. 154

- . notice
- . where no inquiry by Cabinet order, the order laid before Assembly

The Financial Administration Act, R.S.O. 1970, c. 166

- . report losses on debt settlements to Public Accounts Committee

The Fire Marshalls Act, R.S.O. 1970, c. 172

- . educational material re: fire prevention

The Forestry Act, R.S.O. 1970, c. 181

- . registration of declaration of private forest reserve

The Judicature Act, R.S.O. 1970, c. 228

- . Orders in Council naming surety bonding companies
- . Orders in Council re commutation allowances

The Juries Act, 1974, S.O. 1974, c. 63

- . jury panels

The Legislative Assembly Act, R.S.O. 1970, c. 240

- . names of Board of Internal Economy members reported to Assembly

The Liquor Licence Act, 1975, S.O. 1975, c. 40

- . applications for licence
- . summary of Board decisions and reasons

The Local Roads Board Act, R.S.O. 1970, c. 256

- . notice of establishment and appointment meetings

The Ministry of Consumer and Commercial Relations Act, R.S.O. 1970, c. 113

- . summary of decisions and reasons of the Commercial Registration Appeal Tribunal

The Ministry of Revenue Act, R.S.O. 1970, c. 119

- . statement of each remission greater than \$1,000 in public accounts

The Official Notices Publication Act, R.S.O. 1970, c. 303
. all proclamations of Lieutenant-Governor

The Pounds Act, R.S.O. 1970, c. 353
. notice of found cattle, pigs, etc.

The Professional Engineers Act, R.S.O. 1970, c. 366
. code of ethics

The Public Commercial Vehicles Act, 1976, S.O. 1976, c. 223
. tariff of tolls

The Public Officers Act, R.S.O. 1970, c. 382
. list of securities furnished by public officers to be laid before Assembly

The Regulations Act, R.S.O. 1970, c. 410
. publish Regulations within one month of filing
. Standing Committee on Regulations shall from time to time report to the Assembly

The School Boards and Teachers Negotiations Act, 1975, S.O. 1975, c. 72
. fact-finder report if no agreement

The Securities Act, R.S.O. 1970, c. 426
. exemption orders published and laid before Assembly

The Statutes Act, R.S.O. 1970, c. 446
. publish Acts

3) Compliance with Requests for Documents or Information

The Change of Name Act, R.S.O. 1970, c. 60
. certificate

The Coroners Act, 1972, S.O. 1972, c. 98
. report available to family

The Corporation Securities Registration Act, R.S.O. 1970, c. 88
. securities filed

The Creditors Relief Act, R.S.O. 1970, c. 97
. information regarding property and value of debtors

The Environmental Protection Act, 1971, S.O. 1971, c. 86
· orders and approvals under the Act

The Ombudsman Act, 1975, S.O. 1975, c. 42
· complainant to be informed of results of investigation

The Ontario Highway Transport Board Act, R.S.O. 1970, c. 316
· certified copies of orders, decisions, certificates or other documents issued by the Board

The Personal Property Security Act, R.S.O. 1970, c. 344
· copies of registered financing statements

The Pesticides Act, 1973, S.O. 1973, c. 25
· orders made under the Act

The Private Sanitarium Act, R.S.O. 1970, c. 363
· information on inmates - place and date of admission/discharge

The Surveys Act, R.S.O. 1970, c. 453
· field notes of deceased surveyors

The Vital Statistics Act, R.S.O. 1970, c. 483
· whether or not a birth, death, marriage, baptism, still-birth, adoption or change of name is registered

4) Municipal Records

The County of Oxford Act, 1974, S.O. 1974, c. 57
· records of clerk and by-laws
· intention to redeem debentures notice

The District Municipality of Muskoka Act, R.S.O. 1970, c. 131
· records of clerk and by-laws
· public meetings and information to be published regarding area planning

The Education Act, 1974, S.O. 1974, c. 109
· money by-laws, Board reports, separate/public school supporters
· student records open to student and parent

The Municipal Conflict of Interest Act, 1972, S.O. 1972, c. 142
· interest disclosures

The Municipal Franchises Act, R.S.O. 1970, c. 289
· electricity supply contracts other than Ontario Hydro

The Municipality of Metropolitan Toronto Act, R.S.O. 1970, c. 295
.
.
.
financial statement and report of operations published annually

The Regional Municipality of Durham Act, 1973, S.O. 1973, c. 78
.
records of clerk and by-laws

5) Development Plans, etc.

The Boundaries Act, R.S.O. 1970, c. 48
.
decision

The Environmental Assessment Act, 1975, S.O. 1975, c. 69
.
notice and inspection of assessment review

The Local Improvement Act, R.S.O. 1970, c. 255
.
.
.
notices of sidewalk, sewer improvements and special assessment rolls

The Niagara Escarpment Planning and Development Act, 1973, S.O. 1973, c. 52
.
public hearings and inspection of plan

The Ontario Planning and Development Act, 1973, S.O. 1973, c. 51
.
.
.
order establishing planning area to be laid before Assembly
notice of hearings and inspection of plans

The Planning Act, R.S.O. 1970, c. 349
.
Official Plans

The Regional Municipality of Durham Act, 1973, S.O. 1973, c. 78
.
public hearings and publish information to develop plans

2. Problems in Enforcing
Statutory Rights to Information

The statutes referred to in the previous section create legal rights of access to government-held information, and place legal duties on government to make information available. The method of enforcing those rights is to apply for an order of mandamus. Unfortunately the law regarding mandamus¹⁵⁷ is very technical and a person may be deprived of this remedy as a result of legal niceties. In legal terms the person may have a right without a remedy. In practical terms the person has nothing.¹⁵⁸

a) Standing or Special Interest

A major barrier to obtaining an order of mandamus arises before one even gets to court. A person must have locus standi or status before the court will entertain an application for mandamus. The accepted test for standing is that the applicant must have a special legal interest over and above that of a members of the general public or over

157 See generally, de Smith, S.A., Judicial Review of Administrative Action (3d ed., London: Sweet & Maxwell, 1973) at 480-505; and Mullan, D., Administrative Law, C.E.D. (3d ed., Ont.) at 3-128 ff.

158 De Smith, op.cit., at 484: "... it is unsatisfactory that mandamus may be refused on the basis of narrow technicalities when the merits of the case demand the award of a remedy."

and above that of other members of an affected group.¹⁵⁹ The courts do not recognize curiosity or the concern of a taxpayer as special enough interests to give standing.

Consider the case of R. v. Justices of Staffordshire.¹⁶⁰ An abstract of the county accounts had been published. The detailed bills, etc., were filed with the county clerk. Some ratepayers claimed that these were public documents and asked to inspect them. The request was refused. An application for mandamus was brought seeking a court order directing that inspection and copying of the documents be allowed by the clerk. The court agreed that these were public documents but said that the ratepayers were required to show a legal interest in the matter, above that of the general public, before a mandamus order could be made. "Rational curiosity" or the desire for information that would be useful in affecting county expenditures were not "direct and tangible" enough interests to justify mandamus.¹⁶¹ Although the ratepayers had a legal right¹⁶² to see the documents, the court refused to order mandamus.

159 Rankin, in Freedom of Information in Canada: Will the Door Stay Shut?, supra note 96, suggests that in other areas of the law, the standing requirements may be becoming less stringent (at 9-11).

160 (1837), 6 Ad. & E. 84, 112 E.R. 33.

161 Id., at 100-01 (Ad. & E.), 35 (E.R.).

162 This right was recognized in the judgment, at 99-100 (Ad. & E.), 34-35 (E.R.).

Even elected officials must demonstrate a "special interest" if mandamus is sought. Not only is it the case that ratepayers have no right to get mandamus without a special interest over and above the general public, but a member of council "has no right to a roving commission to go and examine books or documents of a [municipal] corporation because he is a councillor. Mere curiosity or desire to see and inspect documents is not sufficient."¹⁶³

In at least two cases, councillors were actually refused access to minutes of council committees, etc., for fear that the councillor might give information to parties in litigation with council as a whole.¹⁶⁴

A specific statutory right of access is not even enough to satisfy the special interest requirement. In R. v. Bradford-on-Avon Rural District Council; Ex Parte Thornton¹⁶⁵ a statute gave Thornton a clear right

¹⁶³ R. v. Southwold Corporation; ex parte Wrightson (1907), 97 L.T. 431 (K.B.) at 432. On the facts of the case, the councillor was allowed to see the agreement in question. The agreement had been read out at a council meeting and one councillor Wrightson opposed its approval. When Wrightson asked to see a copy, the council passed a resolution saying "That the town clerk be instructed not to answer any further question or to afford any further information to Councillor Wrightson with regard to the harbour question, on the ground that he is likely to make use of the information so acquired for a purpose antagonistic to the policy of the town council." No mandamus was granted, but the judge apparently used the threat of court costs to get the municipal council to agree that Mr. Wrightson could see the harbour agreement.

¹⁶⁴ R. v. Hampstead Borough Council; ex parte Woodward (1917), 116 L.T. 213 (K.B.); R. v. Baines Borough Council, ex parte Cowlan [1938], 3 All E.R. 226 (K.B.).

¹⁶⁵ (1908), 99 L.T. 89 (K.B.).

of access to documents of the district council. When a request for documents relating to a petition was refused, Thornton sought an order of mandamus. The court agreed that Thornton, as a parochial elector, had a right to see the requested documents, but no mandamus order was made. Chief Justice Lord Alverstone's reason for refusing mandamus was "Mr. Thornton has shown no special ground at all for his being allowed to see these documents."¹⁶⁶

b) Motive

If a special interest is established, then the court may look at that interest to determine whether the motive of the person seeking a

166 By the Local Government Act 1894, 56 & 57 Vict., c. 73, it was provided by s. 58(5)

Every parochial elector of a parish in a rural district may at all reasonable times without payment inspect and take copies of and extracts from all books, accounts, and documents belonging to and under the control of the district council of the district.

The documents sought concerned opinions of counsel and there was some question about the applicant's using the documents or their contents to assist in litigation against third parties. This did not affect the ratio of the case, however, Darling J. concurred with the opinion of Alverstone C.J.

In R. v. Godstone R.D.C., [1911] 2 K.B. 465, the same statute section was used as the basis for a mandamus application. The applicant in this case was himself facing possible litigation against council and had requested to see a legal opinion that council had received relating to the issue. The application was, of course, refused. The applicant had a special interest, but an improper motive.

mandamus order is a good one. If the motive is not good enough the courts will refuse to give this order.

If a person seeks to have a public duty enforced in order to further his own interests, the courts will generally not order mandamus. S.A. de Smith notes mandamus has been refused to people who wish: to advance their own pecuniary interests; to obtain information for personal reasons; to assist another person; or to assist a limited group of persons to which the applicant belongs.¹⁶⁷

The coming together of the questions of special interest and motive create severe difficulties for anyone wishing to enforce a statutory right of access to information. If the information is sought for a general purpose such as curiosity, or for use in affecting the financial expenditures of government, then no "special interest" exists. No mandamus will be ordered. If the information is sought for personal reasons, for the purpose of litigation or for pecuniary reasons, then the application is not made for the general welfare and the motive of the applicant may not be sufficient to justify mandamus.

167 De Smith, Judicial Review of Administrative Action, supra note 157, at 499.

c) Other

As Mullan notes:¹⁶⁸

One severe limitation on the availability of mandamus is that it will not issue against the Crown or against any servant of the Crown acting in his capacity as servant.

If a statute imposes a public duty on a named Crown servant, however, mandamus will issue against that Crown servant in his personal capacity.

The issues of whether a statutory body is a servant of the Crown or an agent of the legislature for particular purposes,¹⁶⁹ or whether a particular duty is ministerial in nature, will not be dealt with here.

It is enough to note that these are difficult questions that must be looked at in the context of particular cases; if a government agency or employee has a legal duty in the capacity of Crown servant, then mandamus cannot be ordered to force compliance with the law.

Other grounds¹⁷⁰ for refusing mandamus include delay, misconduct, no useful purpose being served, more appropriate remedies, and the existence of rights of appeal.

168 Mullan, Administrative Law, supra note 157, at 3-129.

169 Cf. Moore v. Federal District Commission and Ottawa, [1937] 1 D.L.R. 461 (Ont. S.C.) (Commission servant of the Crown), and R. v. Workmen's Compensation Board, [1942] 2 D.L.R. 665 (B.C.C.A.) (Board a Crown servant for some purposes, and agent of the legislature for others).

170 See generally, de Smith and Mullan, op.cit., supra note 157,

In summary, the existence of many statutory rights of access to information must be considered in the context of the law on mandamus. Rights are effectively limited by the availability of a remedy should those rights be denied. Mandamus, as the law presently stands, provides a remedy of dubious value and effectiveness if legal rights to information are denied.

C. Information Access by
Members of the Provincial Legislature

1. Individual Members

An elected member of the Ontario Legislative Assembly has no greater legal rights of access to government-held information than any other citizen. The status of being an MPP makes no difference to an individual's legal rights in this regard. Briefs submitted to this Commission by members of the New Democratic and Liberal parties emphasize the difficulties which MPPs face in trying to get information from the government. Elected members may have informal access to information by way of contact with civil servants, or in the context of political bargaining.¹⁷¹ Individual members may be in no better

171 Access to information by members of the Legislative Assembly will be dealt with in J. Eichmanis, Freedom of Information and the Policy-Making Process in Ontario (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication, forthcoming).

legal position than other citizens, but the Assembly acting as a whole has very broad legal powers to gain access to government-held information.

2. The Legislature as a Whole

Information which is provided to the Assembly as a whole is placed in the public domain. Verbatim transcripts of debates, etc., are printed in the Ontario Hansard. Reports of Committees are reprinted in the Votes and Proceedings.

The Libel and Slander Act allows newspapers, magazines, etc. to publish reports of the Assembly's activities and reports or public documents without fear of libel suits.¹⁷² It also allows the publication of fair comment on such things.¹⁷³ Thus, documents which are tabled in the House, such as Annual Reports or ministerial papers, are available to the public.

Information comes before the House pursuant to the Standing Orders of the House, statutory requirements such as those relating to Annual Reports, the exercise of the powers of the Assembly conferred by the

172 R.S.O. 1970, c. 243, s. 3(1).

173 Id., s. 24.

Legislative Assembly Act,¹⁷⁴ and the voluntary tabling of information by the government of the day or individual members.

a) Standing Orders of the House

Orders of the House are passed by majority vote of the Assembly. The orders govern the activities of the House, and, in part, establish mechanisms for a regular flow of information from the government to the Assembly. These orders are intimately bound up with the political process involved in passing legislation, and are essentially controlled by the political party in power, the government of the day.¹⁷⁵ The orders make no provision for individual members of the House to extract government information. While Provisional Order No. 2 provides for the question period,¹⁷⁶ in which individual members may ask questions of government ministers, the order does not compel a minister to answer any question. Questions which are placed on the order paper must be replied to in some fashion, within 14 days (Order No. 10). The minister involved must either answer the question, or indicate that the reply will be costly or voluminous and request more time, or indicate that

174 R.S.O. 1970, c. 240.

175 This area will be dealt with by J. Eichmanis, op.cit., supra note 171 and is only briefly referred to here.

176 Votes and Proceedings of the Legislative Assembly of the Province of Ontario, 1st Session, 30th Parliament, No. 1, 1977.

he declines to answer the question. It seems to be well accepted that government ministers are properly acting within their rights in refusing to provide information to the House. After any policy statement or introduction of a government bill, the government must table a compendium of background information (Order No. 8). Committee Reports other than bills must be tabled in the House with brief statements by the Chairman (Order No. 6). Management Board Orders regarding expenditures must be printed with an explanation of significant variances from the printed estimates (Order No. 33). Annual Reports must generally be tabled within six months of the end of the reporting period. These must be tabled before a ministry's estimates may be considered, unless reasons are given to the House by the minister (Order No. 7). Finally, consideration of estimates by the House receives special treatment. A full Hansard service is provided to committees considering estimates, while all other standing committees are taped but not transcribed (Order No. 21). Four hundred and twenty hours are allotted to consideration of estimates (Order No. 31), and ministers are to provide advance briefing material to their opposition critics before consideration of their estimates (Order No. 31).

Research and interviews with those involved in the activities of the House indicate that compliance with those orders which require information to be given to the House is spotty. Some ministries provide advance briefing material on estimates weeks in advance and in great detail; other ministries provide sketchy material sometimes only hours before the estimates are to be considered. Similarly, the compendia of

background information relating to government bills vary in quality and length. As for questions on the order paper, apparently there is an increase in the practice of ministries giving an interim answer requesting more time (this fulfills the formal requirement of the order) and then simply not answering the question.

The sanctions which may be employed to encourage compliance with information-oriented orders of the House are political in nature. If a question is not answered or other material is not provided to the House, then a member may attempt to embarrass the government into providing more information by calling attention to the situation in the House. A member may rise on a point of personal privilege if the matter is serious enough and attempt to have the matter sent to a Procedural Affairs Committee by the Speaker of the House. A hearing would result from this process. If the matter is urgent, an emergency debate under Rule 30 may be attempted. The final sanction is the bringing of a motion of non-confidence in the government. If the government were defeated, tradition would require the calling of an election. Only a limited number of non-confidence motions are allowed each session, so these are sparingly used and generally reserved for weighty policy matters.

b) Annual Reports

Eighty-nine statutes require agencies of government to file Annual Reports for tabling in the legislature. Annual Reports are required of agencies including various ministries, government-funded institutions (e.g. Art Gallery of Ontario, University of Toronto), Crown corporations (e.g., Ontario Housing Corporation), and administrative boards (e.g., the Workmen's Compensation Board). A complete list of the Annual Reports required is contained in Appendix J. There are no requirements concerning the content of Annual Reports. They varied in 1976 from a two-and-a-half page, double-spaced, typewritten Report of Ontario Place Corporation to the approximately 1,600-page Report of the Ombudsman.

c) Powers of Assembly under
The Legislative Assembly Act

Extensive powers to compel information are given to the Assembly by The Legislative Assembly Act, R.S.O. 1970, c. 240. These powers must be exercised by a vote of the Assembly and thus are in the effective control of the government of the day. Political considerations and the balance of power in the House determine the use of the Assembly's legal powers to force disclosure of government information. These factors

place severe limitations on the usefulness of the Assembly as an information access mechanism.

The Assembly has the power to order and compel any person to come before it or any of its committees, and to produce any document or thing. Failing to appear as ordered, refusing to give evidence or giving false evidence, tampering with witnesses or documents, etc., may be punished as contempt of the House. The House has contempt powers independent of the criminal and civil courts, but of the same nature. A person may be jailed if he is found in contempt of the House. The decision of the House in this regard is deemed to be "final and conclusive."

3. Committees of the Legislature

Committees of the House may examine witnesses under oath and accept evidence by affidavit. Section 58 of The Legislative Assembly Act¹⁷⁷ apparently gives committees the authority to require the attendance of witnesses. The committees do not appear to have the authority to punish those who do not appear. Committees must derive contempt powers, etc., from the House and do not have these as of right.

177 R.S.O. 1970, c. 240.

The above powers are given in The Legislative Assembly Act, sections 35, 45-48 and 58, which follow:

35.—(1) The Assembly may at all times command and compel the attendance before the Assembly or a committee thereof of such persons, and the production of such papers and things, as the Assembly or committee considers necessary for any of its proceedings or deliberations. Power to compel attendance of witnesses, etc.

(2) When the Assembly requires the attendance of a person before the Assembly or a committee thereof, the Speaker may issue his warrant directed to the person named in the order of the Assembly requiring his attendance before the Assembly or committee and the production of the papers and things as ordered. R.S.O. 1960, c. 208, s. 35. Speaker's warrant for attendance, etc.

Jurisdiction
of Assembly

45.—(1) The Assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act, the acts, matters and things following:

Assaults,
insults,
libels

1. Assault, insult or libel upon a member of the Assembly during a session of the Legislature or during the twenty days preceding or the twenty days following a session.

Threats

2. Obstructing, threatening or attempting to force or intimidate a member of the Assembly.

Bribery and
offering
of fee

3. Offering to, or the acceptance by, a member of the Assembly of a bribe to influence him in his proceedings as such, or offering to or the acceptance by a member of any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted to or intended to be submitted to the Assembly or a committee thereof.

Interference
with officers

4. Assault upon or interference with an officer of the Assembly while in the execution of his duty.

Tampering
with witness

5. Tampering with a witness in regard to evidence to be given by him before the Assembly or a committee thereof.

6. Giving false evidence or prevaricating or misbehaving in giving evidence or refusing to give evidence or to produce papers before the Assembly or a committee thereof. False evidence

7. Disobedience to a warrant requiring the attendance of a witness before the Assembly or a committee thereof, or refusal or neglect to obey a warrant mentioned in section 36. Disobedi-
ence to
warrant
 8. Presenting to the Assembly or to a committee thereof a forged or false document with intent to deceive the Assembly or committee. Presenting
false
documents
 9. Forging, falsifying or unlawfully altering a record of the Assembly or of a committee thereof, or any document or petition presented or filed or intended to be presented or filed before the Assembly or committee, or the setting or subscribing by any person of the name of another person to any such document or petition with intent to deceive. Falsifying
records, etc.
 10. Taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a member of the Assembly in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. Taking civil
proceedings
against
member
 11. Causing or effecting the arrest, detention or molestation of a member of the Assembly for any cause or matter of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session. Arresting
member for
debt, etc.
- (2) For the purposes of this Act, the Assembly possesses all the powers and jurisdiction necessary or expedient for inquiring into, adjudging and pronouncing upon the commission or doing of the acts, matters or things mentioned in subsection 1 and for awarding and carrying into execution the punishment thereof. R.S.O. 1960, c. 208, s. 45. Jurisdiction
given as to
inquiring
and
punishing
- 46.** Every person who, upon such inquiry, is found to have committed or done any of the acts, matters, or things mentioned in section 45, in addition to any other penalty or punishment to which he may by law be subject, is liable to imprisonment for such time during the session of the Legislature then being held as is determined by the Assembly. R.S.O. 1960, c. 208, s. 46. Punishment
for contra-
vention of
s. 45.
- 47.—(1)** Where the Assembly declares that a person has been guilty of a breach of privilege or of a contempt in respect of any of the acts, matters and things mentioned in section 45 and directs that the person be kept and detained in the custody of the sergeant-at-arms attending the Assembly, the Speaker shall issue his warrant to the sergeant-at-arms to take the person into custody and to keep and detain him in custody in accordance with the order of the Assembly. R.S.O. 1960, c. 208, s. 47 (1). Proceeding
on contra-
vention of
s. 45 and
arrest
thereunder

Warrant of
committal

(2) Where the Assembly directs that the imprisonment shall be in a correctional institution in the Judicial District of York, the Speaker shall issue his warrant to the sergeant-at-arms and to the superintendent of such correctional institution commanding the sergeant-at-arms to take such person into custody and to deliver him to the superintendent of such correctional institution, and commanding the superintendent to receive and keep and detain him in custody in accordance with the order of the Assembly. R.S.O. 1960, c. 208, s. 47 (2), *amended*.

Decision of
Assembly
final

48. The determination of the Assembly upon any proceeding under this Act is final and conclusive. R.S.O. 1960, c. 208, s. 48.

58. Any standing or special committee of the Assembly may require that facts, matters and things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine witnesses upon oath, and for that purpose the chairman or any member of the committee may administer the oath in Form 2. R.S.O. 1960, c. 208, s. 58. ^{Power of committee to examine on oath}

D. Information Access in
the Course of Litigation

This area has been dealt with in Chapter II, Part E, "Withholding of Government Information from the Courts.", supra.

E. Information Access by
Members of the Press

In Ontario, the press has no special constitutional position or status. No special statutory powers are given to the press to facilitate greater access to government information than is possessed by an ordinary citizen.

F. The Ombudsman as an
Information Access Mechanism

As the office is presently constituted, the Ombudsman has a very limited function as a provider of information to the public. The Ombudsman has legal authority to force disclosure of some government information, but this power is limited in several ways. The Ombudsman only has jurisdiction to investigate matters relating to individuals, and only in their personal capacity.¹⁷⁸ That is, all matters relating to corporations, municipalities, etc., are outside the Ombudsman's jurisdiction. All statutory secrecy sections may be used as justification for refusing information to the Ombudsman, except for information relating solely to a particular complainant.¹⁷⁹

The Attorney General may stop information from being provided to the Ombudsman. If the Attorney General certifies that information might interfere with law enforcement, disclose Cabinet deliberations or disclose any thing Cabinet dealt with that would be injurious to the public interest, then the Ombudsman cannot have the information.¹⁸⁰

Disclosure of information by the Ombudsman is limited as well. The Ombudsman must take an oath of secrecy and conduct his investigations

178 The Ombudsman Act, 1975, S.O. 1975, c. 42, s. 15(1).

179 Id., s. 20(3).

180 Id., s. 21(1).

in private.¹⁸¹ Disclosure in Reports of the Ombudsman is limited to "such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations."¹⁸²

1. The Ombudsman's Rights
of Information Access¹⁸³

The Ombudsman in Ontario has been armed by statute with powers to pierce the government veil of secrecy in certain circumstances. The Act provides that the Ombudsman may require any officer, employee, or member of any governmental organization who is able to give any information relating to "any matter" under investigation to furnish him with any information, documents, or things which are in that person's control or possession.¹⁸⁴ In addition, the Ombudsman may examine under oath the complainant, officers or employees of any governmental organization, or any other person who may provide information relating to the matter under investigation.¹⁸⁵ Where, however, disclosure of government information is prohibited by any statute other than The

181 Id., ss. 13(1), 19(2).

182 Id., s. 13(2).

183 This section has been excerpted from an unpublished paper prepared for the Commission research staff in 1978 by G.M. Caplan, a student at the Faculty of Law, University of Toronto.

184 R.S.O. 1970, c. 42, s. 20(1).

185 s. 20(2).

Public Service Act, the Ombudsman will be permitted access only to that information which relates solely to the complainant, provided that the previous consent of the complainant has been obtained in writing.¹⁸⁶ Finally, the Act provides that the rule of law which authorizes or requires the withholding of any evidence or document, or the refusal to answer any question on the grounds that such disclosure would be injurious to the public interest, does not apply to the Ombudsman.

As Reid notes,

The intention of the legislature, obviously, was to relieve the ombudsman from the frustrations commonly experienced by courts in bowing to statutory and prerogative privileges to withhold material evidence in legal actions; an ombudsman cannot function if he is denied access to administrative files.

187

Notwithstanding these powers, however, access to government information is precluded where the Attorney General certifies that disclosure might interfere with the investigation or detection of offences, might disclose the deliberations of the Executive Council, or would disclose proceedings of the Executive Council or of its committees relating "to matters of a secret or confidential nature and would be injurious to the public interest."¹⁸⁸ This section of the Act has been criticized as open to abuse, but, to date, such does not appear to be the case in

186 s. 20(4).

187 Reid, A.D., The New Brunswick Ombudsman Act (1968), 18 U. Toronto L.J. 361, at 368.

188 s. 21(1).

Ontario at least. The Attorney General has on two occasions refused to issue a certificate on the request of his fellow ministers.¹⁸⁹

Given these powers, one might have thought that the Ombudsman would serve as a convenient and ready weapon for individuals denied access to government information. In fact, the number of these complaints have been quite low.¹⁹⁰ The bulk of in-jurisdiction complaints seek either an explanation for the denial of a benefit or for an adverse administrative decision; or, regardless of the reasons given, seek to have that administrative decision overturned.

2. Disclosure to the Public and the Complainant

Under the Act, the Ombudsman is sworn to secrecy and all investigations are to be conducted in private.¹⁹¹ As a result, the Ombudsman does not permit the complainant to see his government administrative file, unless the government organization expressly permits it. Nevertheless,

189 Interview with Ombudsman staff members, spring, 1978.

190 Id. Statistical data on the number of such complaints could not be provided by the Ombudsman's staff, nor could data be determined from the Annual Reports. One Corrections Investigator, however, did estimate that 2-3% of the complaints he investigated consisted of the complainant's desire to either see or verify his institutional file.

191 ss. 13(1), 19(2).

there would appear to be situations under the Act where the Ombudsman may legally disclose privileged information.

First, notwithstanding his oath of secrecy, the Ombudsman may "disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations."¹⁹² As a result, in his North Pickering Report, the Ombudsman reproduced a number of internal investigative reports of the Ministry of Transportation and Communication, and a copy of a memorandum from the Pickering Project Director to the Assistant Deputy Minister.¹⁹³

Second, the Ombudsman has been given a wide discretion as to the procedures he may adopt in the complaint resolution process, and "in the interests of a fair and full hearing [he] might choose to give a petitioner the opportunity to examine whatever material he had before him, including confidential documents."¹⁹⁴ The practice of the Ombudsman has been not to disclose or permit access to the government administrative file, although it is the policy of the Ombudsman to inform the complainant to the fullest extent of the reasons for the Ombudsman's conclusions.

192 s. 13(2).

193 See Report of the Ombudsman Concerning the North Pickering Project, Appendix A.

194 Reid, supra note 187, at 368-69.

G. Information Access by Other Levels
and Branches of Government

A great deal of information is apparently shared within government on an informal basis. This section will only deal with types of information sharing that are specifically referred to in the statutes and regulations of Ontario.¹⁹⁵ Various levels of information sharing are contemplated in the statutory framework of the province. A few examples are set out below, to demonstrate the range of inter-governmental exchanges.

1. Discretionary Release of Information
to Other Government Personnel

a) Absolute Discretion

Under The Mental Health Act¹⁹⁶ the case of every psychiatric patient held pursuant to the Criminal Code is to be reviewed annually. A report is prepared and the Chairman of the Review Board may "in his discretion transmit a copy thereof to any other person."

195 For a discussion of information sharing within government, see M. Brown et al., op.cit., supra note 137.

196 R.S.O. 1970, c. 269, s. 31.

Under The Petroleum Resources Act¹⁹⁷ test results, reports or "any information" are to be kept secret, except for the purposes of administering the Act. However, the minister is given an absolute discretion to disclose anything he wishes, to anyone he wishes.

b) To Aid in Administration
of Certain Acts

Information collected under the OHIP scheme is to be kept secret but any person employed to administer the Act¹⁹⁸ may release information in connection with the administration of the following acts: The Medical Act, The Public Hospitals Act, The Private Hospitals Act, The Ambulance Act, Hospital Insurance and Diagnostic Services Act (Canada), Medical Care Act (Canada), or the Criminal Code or regulations made thereunder.

c) Release of Information for
Certain Reasons Specified in Statutes

The Land Speculation Tax Act¹⁹⁹ states that no government employee is compellable in any legal proceedings to give evidence regarding any

197 S.O. 1971, Vol. 2, c. 94, s. 5.

198 The Health Insurance Act, 1972, S.O. 1972, c. 91, s. 44.

199 S.O. 1974, c. 17, s. 18.

information collected under the Act. All information collected under the Act is to be kept secret. The exceptions to this blanket secrecy are for purposes in respect of criminal proceedings under any Act of Canada, or prosecutions for provincial offences under any Act of Ontario or any proceedings related to the collection of tax.

In the above cases, the decision whether or not to share information is placed in the hands of the government agency holding the information.

2. Conditional Release of Information
to Other Government Personnel

Certain acts allow the members of government agency [A] access to information which is held by government agency [B], subject to certain preconditions being met. This leaves no discretion to members of the holding agency [A] to withhold information from agency [B].

a) Formal Agreements re Information Exchange

The Gift Tax Act²⁰⁰ makes provision for formal agreements to be made between Ontario and the federal government or other provincial governments for the exchanging of information aimed at the raising of

200 S.O. 1972, c. 12, s. 52(6).

revenue. In the absence of formal agreements, the strict secrecy provisions of the Act apparently apply.

b) Oaths of Secrecy to be Taken
by a Recipient of Information

The Vital Statistics Act²⁰¹ contains strict secrecy provisions. However, certain employees of various government agencies may have access to the secret information if they take an oath of secrecy. These government personnel include authorized representatives of Canada, Ontario, another province, or another country; the Regional Director of Family Allowances for Canada; the Medical Officer of Health of a municipality or health unit; any employee of a Board of Health; any employee of the Ministry of Health; any member of a police force; and members of a Children's Aid Society.

Access to government information, be it by members of the public or other government personnel, raises concerns about possible infringements on the privacy of those who supply information to the government. This issue will be addressed in the following Chapter.

201 R.S.O. 1970, c. 483, s. 54 and Regulation No. 820, R.R.O. 1970, s. 66.

CHAPTER IV

INDIVIDUAL PRIVACY AND DISCLOSURE OF GOVERNMENT INFORMATION

A. Introduction

While Chapters II and III dealt with the secrecy of and access to government information of all kinds, Chapter IV will concern itself only with government-held information about individuals which may have some private or confidential character. Existing legal protections against the disclosure of such information will be the primary focus of this chapter. We will see that these protections are very limited, both in law and in practical application.

Privacy has not been the subject of legal definition in the law of Ontario. What is sometimes loosely called a "right to privacy" has not been developed as a legal concept in the same way as, for example, the right to enjoyment of one's property. The relationship of privacy to the law of Ontario will be discussed in Part C of this chapter.

Part D will deal with the available literature concerning privacy and the law. A systematic review of the literature will not be undertaken.

Rather, Part D will be an assessment of some of the common difficulties, including definitional problems, facing those who have written in the area.

This chapter relates to government activity, not activity of the private sector, and concerns the handling of information already in government hands. Any invasion of privacy which may have taken place in obtaining the information is outside the scope of this section. For these reasons, among others, very little of the existing literature is directly applicable to the particular problems being addressed here.²⁰²

A number of aspects of the law have become associated with privacy in some way. Because of this, and because of the suggestions from some quarters that privacy is already well protected in our legal system, each of the following areas of Ontario law will be discussed, their major characteristics set out, and their possible relevance to the release of government-held information will be examined:

- . Invasion of Territorial or Proprietary Privacy
 - . Trespass to Land
 - . Nuisance
 - . Criminal Code re Defence of Property, etc.
 - . Trespass to Chattels or Personal Property
- . Interference with Private Communications
 - . Criminal Code re Wiretapping, etc.
 - . Federal Post Office Act
 - . Ontario Telephone Act
 - . Privilege

202 As well, a great deal of published material is from the United States and the American law in this area is much different from that of Ontario.

- . Publicity Placing a Person in a False Light
 - . Defamation
 - . Criminal Code re Defamatory Libel, etc.
 - . Injurious Falsehood
- . Appropriation of a Person's Name or Likeness
 - . Passing Off
 - . Appropriation of Personality

There are at least four areas of Ontario Law which might have some impact in the field of privacy protection vis-a-vis government's release of information concerning individuals. The major characteristics of these areas of the law will be set out and each will be examined as a privacy protection device in Part F:

- . Action for Breach of Contract
- . Action for "Wilful Act Causing Harm and Mental Suffering"
- . Action for Breach of Confidence
- . Statutory Secrecy Provisions

The extent of privacy protection which might be provided by the above is difficult to determine. The principles of law governing these areas were not developed in the context of individual privacy protection. For example, the breach of confidence action has been utilized almost exclusively to protect commercial information.²⁰³ Our research uncovered no reported instances of the government being sued for breach of confidence in the individual privacy context.

203 See S. Soloway, Public Access to Business Information in Government Files (Toronto: Commission on Freedom of Information and Individual Privacy, Research Publication, forthcoming).

Another problem in attempting to assess the effectiveness of actions based on the above is the extreme difficulty, under present law, of bringing any action against the provincial government. These problems will be dealt with in Part G of this Chapter. Part H is a note on the tort of invasion of privacy. The question is discussed as to whether a tort action of any kind is an appropriate mechanism to deal with the problem of possible disclosure by government of private or confidential information about individuals.

B. Focus of the Chapter:
Confidentiality and Related Concepts

The tension that exists between freedom of information and individual privacy is clear. The government holds information concerning large numbers of individuals. If such information is released to the public, then the privacy of these individuals may be invaded. Any increase in access to government information must be balanced against possible encroachments on the privacy of individuals.

Information disclosure will here be considered in only one context -- release to persons outside of government. The issues raised by the transfer of information among branches or levels within government is dealt with in another Commission research publication.²⁰⁴

204 M. Brown et al., op.cit., supra note 137.

The difficult task of striking a balance between two desirable objectives is one which this Commission must confront. Of central concern in this exercise are the following questions:

- 1) To what extent should access to government information be used as a conduit for information concerning individuals and entities in the private sector, as well as a source of information about government?
- 2) In what areas have confidentiality and privacy traditionally been recognized or protected, and to what extent should these traditional recognitions and protections be reflected in any information access scheme?
- 3) In what instances have exceptions to the general law been made regarding government, and should these exceptions be maintained in an access scheme that might establish the law and will, at the least, govern practice relating to the government's handling and disclosure of private sector information?
- 4) What are the most appropriate enforcement mechanisms to ensure effective protection from information-related assaults on citizens' privacy?

At present, an individual has a very limited legal ability to protect the confidentiality of information held by the government. Protecting one's privacy in this context is difficult. An attempt will be made to put this aspect of law and privacy into perspective. The following section will describe the general relationship of privacy and Ontario law.

C. Privacy as a Legal Concept

1. In Ontario

The law of Ontario is easily summarized on this point. Privacy is not a legal concept. Neither "privacy" nor the "right to privacy" are concepts which have achieved recognition or definition in the common law or statutes of Ontario. Thus, an individual who feels that his privacy has been invaded will have no legal remedy to pursue.²⁰⁵ As

205 The legal position at common law is well summed up in an Australian case by Latham C.J. in Victoria Park Racing v. Taylor (1973), 58 C.L.R. 479 at 496:

With regard to the question of privacy, no doubt the owner of a house would prefer that a neighbour should not have the right of looking into his windows or yard, but neither this court nor a court of law will interfere on the mere ground of invasion of privacy; and a party has a right even to open new windows, although he is thereby enabled to overlook his neighbour's premises and so interfering, perhaps, with his comfort. (emphasis added)

Professor E.F. Ryan notes in his paper, "Protection of Privacy in Ontario -- A Preliminary Study":²⁰⁶

Privacy is not something which has been legally protected for its own sake ... The collective sense of propriety of legislatures, judges and ministers, as participants in and products of the social order has been the major bulwark against legalized invasion of privacy ... (emphasis added)

Ontario recognizes no tort of invasion of privacy, has no privacy statute and no general data protection legislation.²⁰⁷ The Law Reform Commission of Ontario indicates that "privacy is a new field in legal and constitutional thought."²⁰⁸

Privacy receives a certain degree of legal protection indirectly, but it is not presently protected for its own sake. An illustration of this point might prove useful. The law of personal property, for example, creates legal rights and obligations reflecting the public interest in discouraging people from interference with the enjoyment of property owned by others. If [X] picks up a letter belonging to

206 Report on the Protection of Privacy in Ontario, Ontario Law Reform Commission (1968), Appendix at 2.

207 Ontario does have a form of data bank legislation in The Consumer Reporting Act S.O. 1973, c. 97, pertaining to credit reporting agencies.

208 Supra note 206, at 2, letter of transmittal. Prof. Ryan's paper explores the nature of privacy as a possible civil liberty and discusses the locus of constitutional power in Canada for legislative treatment of the problems surrounding invasion of privacy. He concludes that Ontario has considerable authority to legislate concerning privacy.

[A] and reads it, then [X] may be sued for the unauthorized interference with the personal property of [A]. The law thus stops people from handling other people's letters and this affords a measure of privacy to written communications. However, if [X] simply read the same letter lying on a desk, without actually physically touching the letter, the same invasion of privacy would occur, vis-a-vis the information contained in the letter, but [A] would have no basis for suing [X]. Protecting privacy is not something which the law adverts to in dealing with cases involving interference with personal property. The resulting increase in the individual's ability to protect his privacy by invoking the law in this area is, then, merely an indirect by-product of the law's protection of a completely different public interest. These indirect protections will be explored in more detail in Part E of this chapter.

Some other common law jurisdictions, most notably the United States, have developed the concept of privacy into a legal right which is given protection for its own sake. The development of privacy law outside Ontario will now be considered briefly.

2. Other Jurisdictions²⁰⁹

The United States has been most active in developing common law protection of privacy. Over the past 70 years, many states have developed a tort of invasion of privacy, using British case law as a basis for analysis.²¹⁰ Interestingly enough, British courts themselves have not developed this area of the law; neither have Australian or Canadian courts.²¹¹

A number of jurisdictions have statutes aimed at the protection of individual privacy. The American federal government and most states have passed such laws.²¹² Data protection legislation is being introduced in many countries around the world, including Sweden, France

209 For detailed consideration of the privacy protection schemes of other jurisdictions see the Commission research publication by M. Brown et al., op.cit., supra note 137.

210 For analysis of the development and scope of this tort, see Prosser, W.L., Privacy (1960), 48 Calif. L. Rev. 383, and for a description of the development of privacy law in the context of the American Bill of Rights, see Westin, A.F., Privacy and Freedom (Toronto: McClelland and Stewart, 1967) at 330 ff.

211 See Glasbeek, H.J., Outraged Dignity - Do We Need a New Tort? (1968), 6 Alta. L. Rev. 77.

212 See Smith, R.E., Compilation of State and Federal Privacy Laws (Washington D.C. 1977-78: Privacy Journal).

and Germany, among others. In New Zealand, a Privacy Commissioner has been established to deal with computer complaints.²¹³

At the federal level in Canada, invasions of privacy stemming from unauthorized interception of communications by wiretapping, etc., are dealt with in the Criminal Code.²¹⁴ Part IV of the Canadian Human Rights Act²¹⁵ provides for some measure of privacy protection relating to the use and contents of government files concerning individuals. This federal legislation doesn't amount to the kind of legal recognition and status given to privacy by some provincial privacy acts, however.

British Columbia,²¹⁶ Saskatchewan²¹⁷ and Manitoba²¹⁸ statutes allow individuals whose privacy has been invaded to sue the person or

213 Copies of these pieces of legislation are available for inspection at the Commission offices.

214 R.S.C. 1970, c. C-34, s. 178.1 and following.

215 S.C. 1976-77, c. 33, proclaimed in force March 1, 1978.

216 S.B.C. 1968, c. 39.

217 S.S. 1974, c. 80.

218 S.M. 1970, c. 74.

institution responsible.²¹⁹ A couple of major problems exist with such legislation. First, the definition of "privacy" is unclear. Second, governments may not be subject to the acts.

The British Columbia Privacy Act, for example, states that:

The nature and degree of privacy to which a person is entitled in any situation or in relation to any matter is that which is reasonable in the circumstances.
(emphasis added)

220

Of particular concern in the context of this paper is the degree to which provincial governments are required to make their information practices conform to privacy legislation. In discussing the British Columbia Privacy Act, Professor Ryan writes in his paper for the Law Reform Commission of Ontario:

The statute, then, creates an almost blanket exception in favour of what may be termed "duly constituted authority" ... the Privacy Act amounts to a virtual licence for governmental invasion of privacy, cast in the form of a protection.

221

219 The appropriateness or effectiveness of a tort lawsuit as a privacy protection device will be commented upon in Part H of this Chapter. Our research indicates that only one reported case has been brought under a privacy statute in Canada. It was unsuccessful. In Davis v. McArthur a private investigator had placed a "bumper beeper" on the plaintiff's car for the purpose of following the car. The plaintiff won at trial, but the Court of Appeal of British Columbia reversed the decision and found in favour of the defendant, saying that there had been no invasion of privacy as contemplated by the Act. Reported at (1970), 10 D.L.R. (3d) 250 (B.C.S.C.), reversed, (1971) 17 D.L.R. (3d) 760.

220 S.B.C. 1968, c. 39, s. 2(2).

221 Ryan, supra note 206.

This problem, where the government is treated differently than other privacy invaders, will also be considered in the next section.

D. The Literature Concerning
Privacy and the Law

Very little of the existing literature deals with the problems raised by disclosure of government information about individuals. The surveys of existing law do not shed a great deal of light on the subject matter of this chapter.

1. Lack of Definitional Consensus

Some commentators attempt to isolate the basic elements of privacy and define privacy in a positive fashion, while other descriptions of privacy catalogue various aspects of privacy in an attempt to define its parts rather than its nature. Still others attempt to show what privacy is by outlining the kinds of activity that infringe on its existence.

The British Younger Report on Privacy declined to formulate a definition of privacy²²² as did Professor Ryan in his study for the Law Reform Commission of Ontario. A number of suggested definitions were catalogued in Appendix K of the Younger Report. That appendix is reproduced below (on page 146).

If the goal of this Report were to make pronouncements concerning a general right to privacy in all aspects, then the definitional issue would, of course, be of great importance. However, the task at hand is an assessment of the present Ontario law regarding disclosure of government information and attendant privacy or confidentiality protections. This assessment will not be hampered to any great extent by the lack of a general definition of privacy.

This chapter concerns itself with information about individuals -- information which relates to the individual in his personal capacity and is normally of no commercial value.²²³ Apart from one particular grey area in which information about individuals borders on the "commercial" sphere, it is relatively simple to identify information concerning individuals; no general definition of privacy is necessary

222 Report of the Committee on Privacy (the Younger Report) (Cmd. 5012, 1972) at 18, 22.

223 Names and addresses of a number of people might become valuable as a mailing list. Research indicates that at one time the Ontario government did sell lists of car owners, but that government policy has discontinued this practice.

APPENDIX K

DEFINITIONS OF PRIVACY

(Chapter 4)

The following definitions of privacy are quoted to illustrate the scope and variety of forms which the concept can take.

Judge Cooley (1888): "The right to be let alone".

US Chief Justice Burger (May 1970): "The very basic right to be free from sights, sounds and tangible matter we do not want". (He also endorsed Judge Cooley's view in speaking of "The right of every person 'to be let alone'").

Clinton Rossiter (1958): "Privacy is a special kind of independence, which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns, if necessary in defiance of all the pressures of modern society".

Conclusions of the Nordic Conference on the Right of Privacy (1967): "2. The right to privacy is the right to be let alone to live one's own life with the minimum degree of interference. In expanded form, this means:

The right of the individual to lead his own life protected against: (a) interference with his private, family and home life; (b) interference with his physical or mental integrity or his moral and intellectual freedom; (c) attacks on his honour and reputation; (d) being placed in a false light; (e) the disclosure of irrelevant embarrassing facts relating to his private life; (f) the use of his name, identity or likeness; (g) spying, prying, watching and besetting; (h) interference with his correspondence; (i) misuse of his private communications, written or oral; (j) disclosure of information given or received by him in circumstances of professional confidence."

Professor Alan Westin (1967): (one of two definitions) "Viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical and psychological means, either in a state of solitude or small group intimacy or, when among larger groups, in a condition of anonymity or reserve".

Dean Prosser (1960): In his view intrusion into privacy could amount to any of four torts. The four torts are

1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs.
2. Public disclosure of embarrassing private facts about the plaintiff.
3. Publicity which places the plaintiff in a false light in the public eye.
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

Mr Brian Walden's Right of Privacy Bill (November 1969): "9.—(1) 'Right of privacy' means the right of any person to be protected from intrusion upon himself, his home, his family, his relationships and communications with others, his property and his business affairs, including intrusion by—

- (a) spying, prying, watching or besetting;
- (b) the unauthorised overhearing or recording of spoken words;
- (c) the unauthorised making of visual images;
- (d) the unauthorised reading or copying of documents;
- (e) the unauthorised use or disclosure of confidential information, or of facts (including his name, identity or likeness) calculated to cause him distress, annoyance or embarrassment, or to place him in a false light;
- (f) the unauthorised appropriation of his name, identity or likeness for another's gain."

Professor Alan Westin (1967): (the second of his two definitions) "Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others."

Professor Arthur R Miller (1971): "The basic attribute of an effective right of privacy is the individual's ability to control the circulation of information relating to him—a power that often is essential to maintaining social relationships and personal freedom".

for this identification or classification. For example, a person's name and address is clearly information about that individual. In certain circumstances, a person might not wish the government to give out his name and address to the general public. It may be the person does not wish the world to know that family benefits or welfare are being received. Perhaps the person does not want to be located by his/her former spouse.

The legal question becomes, "To what extent and in what circumstances can an individual use Ontario law to control the government's dissemination of information about himself?"

2. Lack of Relevance to the
Issue of Government Disclosure

Much of the available literature on privacy and law in Canada is of the survey variety. Articles and papers by Burns,²²⁴ Glasbeek,²²⁵ Williams,²²⁶ Ryan,²²⁷ and Rowan²²⁸ discuss various aspects of

224 Burns, P., Privacy and the Law - the Canadian Experience (1976), 54 Can. B. Rev. 1.

225 Glasbeek, H.J., Outraged Dignity - Do We Need a New Tort?, supra note 211.

226 Williams, J.S., Legal Protection of Privacy - A Study for the Privacy and Computers Task Force, Department of Communications and Department of Justice, Ottawa, 1972.

227 Ryan, Protection of Privacy in Ontario - A Preliminary Study, supra note 206.

228 Rowan, H., Privacy and the Law, L.S.U.C. Special Lectures (Toronto: Law Society of Upper Canada, 1973) at 275.

law which provide remedies for and protections from certain privacy invasions.

a) Non-Government Activity

The surveys referred to concentrate on private sector activity; the discussions of law relate to rights and remedies as between corporate or individual members of the public. Discussions of the tort of "appropriation of personality for monetary benefit" have little relevance to government. Even in those areas where government might be involved in the same kind of activity as private sector invaders of privacy, one finds that the Ontario government has exempted itself from compliance with the general laws, so that government activity may carry on unhindered. For example, in the area of invasion of territorial privacy, the laws of trespass are modified by statute. Police officers are given the right to enter property against the owner's wishes if a search warrant is obtained.²²⁹ Indeed, numerous statutes give government inspectors the right to enter premises with warrants.²³⁰ In other areas, Ontario statutes specifically make civil servants and the government immune to being sued in situations where members of the

229 The Summary Convictions Act, R.S.O. 1970, c. 450, s. 16.

230 See the Business, Consumer and Commercial section of Appendix K dealing with the information gathering process for a non-exhaustive list of these statutes.

public would be held liable in court for their actions.²³¹ The literature on privacy and the law does not deal with the government's special legal status nor its unique types of activity.

b) Commercial Aspects of Privacy

Much of the literature deals with the commercial aspect of privacy and not merely with the instances where an individual's sense of privacy is affected. The law relating to breach of confidence developed primarily in the context of business secrets and commercially valuable confidential information, and it is normally written about in that context.

c) False Information Issues

Prosser's classification of the four aspects of privacy law included the tort of "publicity which places the plaintiff in a false light in the public eye,"²³² but torts such as defamation have no bearing on the issue of government's release of information about individuals.

231 See the section *infra* on "Problems in Enforcing Existing Legal Protections" for a discussion of the government's limited liability.

232 Prosser, W.L., Privacy (1960), Calif. L. Rev. 383, at 389.

If the information is true, then liability under the "false light" type of torts is non-existent. At most, all the law relating to defamation accomplishes is to ensure that the government does its homework and discloses only true information about individuals.

E. Some Aspects of Law
Associated with Privacy

It has been suggested, particularly in the Younger Report,²³³ that the existing law provides a great deal of protection for individual privacy. Those areas of the law that have become associated with privacy or which provide indirect protection of privacy will be examined. In order to assess their relevance to the issue of the disclosure by government of information about individuals, their basic characteristics will be briefly described. It should be noted at the outset that the aspects of the law discussed here in Part E are, in fact, not particularly relevant or helpful in this context.²³⁴

233 Supra note 222. The terms of reference of the Committee related solely to the private sector and not to the government.

234 For detailed considerations of the privacy components of these areas of the law, and their effects on private sector activities, see the articles cited in notes 224-228, and 232, supra.

1. Invasion of Territorial or
Proprietary Privacy

The law of Ontario provides a great deal of protection for territorial privacy. Property interests are given legal protection, and through them the privacy interest is indirectly given protection.

How does this relate to disclosure of government information? If one can prevent government from ever collecting information about oneself in the first place, then a measure of control over individual information is gained. However, government personnel have broad powers under both federal and provincial laws to intrude upon territorial privacy with impunity, if it is in the course of government activity. The law dealing with the collecting activity has little or nothing to do with what the government can do with the information once it has been collected. For example, suppose an Ontario civil servant were to infringe the law by trespassing, and as a result found evidence relevant to a prosecution. That evidence could be admitted in court, regardless of the fact that it had been obtained illegally.

a) Trespass to Land

Three elements are necessary to maintain an action in trespass:

- 1) physical entry,
- 2) unauthorized entry, and
- 3) the occupier must bring the action.

Trespass is concerned only with the possessor's interest in holding his land free from physical intrusions.²³⁵ Where [A] commits a trespass in order to spy upon [B]'s racehorse, for example, [A] will be required to pay damages.²³⁶ [B] need not prove that he suffered any particular economic loss. Although [B]'s main complaint is that he has been spied upon, the award will be granted on the basis of the trespass. The court will refuse to compensate for the same intrusion upon the plaintiff's peace of mind.²³⁷ For instance, if [A] built a tower on his own land, and spied upon [B]'s racehorses from there, [B] is left without a remedy.²³⁸

Except where he has specific authorization to enter land without permission, a civil servant is subject to the same liability as any other citizen. His employer, the Crown, may also be vicariously liable. However, in many instances, civil servants have authority to enter upon land in circumstances which would amount to trespass. The civil servants and the government of Ontario cannot be sued for such entry. Examples of authorizations to enter without permission are to be found

235 Fleming, J.G., The Law of Torts (5th ed., Sydney: Law Book Co., 1977).

236 Hickman v. Maisey, [1900] 1 Q.B. 752.

237 Glasbeek, Outraged Dignity - Do We Need a New Tort?, supra note 211, at 87.

238 Victoria Park Racing v. Taylor (1973), 58 C.L.R. 479 (Aust. H.C.).

in statutes such as The Liquor Licence Act,²³⁹ The Travel Industry Act,²⁴⁰ and The Land Speculation Tax Act.²⁴¹ The entry provisions in these statutes are restricted to business premises. Here the invasion of privacy is justified by the societal necessity to monitor activities which have to be licensed. In effect, the government has recognized that there are various stages of privacy. The need to monitor certain activities apparently outweighs the desire to protect some interests in territorial privacy.

Particular authority is given to police officers to enter premises without permission provided they follow the provisions set out in the Criminal Code,²⁴² or The Summary Convictions Act.²⁴³ This authority is to be distinguished from that given to civil servants, as it includes private premises. Note that actions against the police are governed by The Police Act.²⁴⁴ Torts committed by the municipal police are the responsibility of the local chief of police, and any damages awarded are paid by the municipality.²⁴⁵ Torts committed by the OPP are the

239 S.O. 1975, c. 40, ss. 21-23.

240 S.O. 1974, c. 15, ss. 17-20.

241 S.O. 1974, c. 17, s. 12.

242 R.S.C. 1970, c. 34, ss. 443-6.

243 R.S.O. 1970, c. 450, s. 16.

244 R.S.O. 1970, c. 351, ss. 24, 47.

245 The Police Act, s. 24(1)(4).

responsibility of the Commissioner, and any damages awarded are paid by the Treasurer of Ontario.²⁴⁶ Civil actions against the police for unauthorized entry (amounting to trespass) are possible.

b) Criminal Code: Defence of Property

The Criminal Code specifically permits any person to use as much force as is necessary to prevent another person from entering or breaking into his home.²⁴⁷ The physical integrity of the individual's home is protected by a number of further provisions, dealing with trespass,²⁴⁸ mischief,²⁴⁹ arson,²⁵⁰ causing a disturbance,²⁵¹ and breaking and entering.²⁵² Even watching an individual for the purpose of affecting his activity is an offence.²⁵³ The citizen is thereby protected from all unauthorized intrusions, including those perpetrated by Ontario civil servants. It has been noted above, however, that civil servants and police are in many instances authorized by law to intrude.

246 The Police Act, s. 47(1), (2).

247 Criminal Code, s. 40.

248 Id., s. 173.

249 Id., s. 387.

250 Id., s. 389.

251 Id., s. 171(1).

252 Id., ss. 306-309.

253 Id., s. 381(f).

c) Nuisance

Nuisance is related to trespass in that both are actions which the common law has evolved to protect interests in land. Whereas the trespass action exists to protect the owner's exclusive possession of his land, the nuisance action serves to prevent interference with the occupier's beneficial use of his land. Unlike trespass, a nuisance action may succeed where the activity complained of takes place outside the land affected. There is some authority for the proposition that actual physical interference with the use or enjoyment of the land is not required for the action to succeed,²⁵⁴ but the actual use of the property must still be affected. This action is not appropriate to free one from being spied upon from a vantage point outside the land. The case law appears to be too well-established to permit this.²⁵⁵ The unequivocal statement of Latham C.J. is appropriate here:

With regard to the question of privacy, no doubt the owner of a house would prefer that a neighbour should not have the right of looking into his windows or yard, but neither this court nor a court of law will interfere on the mere ground of invasion of privacy; and a party has a right even to open new windows, although he is thereby enabled to overlook his neighbour's premises and so interfering, perhaps with his comfort.

256

254 Motherwell v. Motherwell (1976), 73 D.L.R. (3d) 62 (Alta. C.A.). See Part G, #3, "Tort of Invasion of Privacy" infra, for a discussion of this case.

255 Victoria Park Racing v. Taylor (1973), 58 C.L.R. 479.

256 Id., at 496.

d) Trespass to Chattels or Personal Property

A person may sue on the basis of unauthorized interference with property other than land. In order to succeed, the plaintiff must be able to prove a deliberate unauthorized interference with a chattel²⁵⁷ in his possession. The plaintiff is not required to show that he suffered actual damage, but he must show that the interference with his chattel was direct. Where civil servant [A] opens [B]'s mail and reads it, [B] will probably succeed in a suit for damages. Vicarious liability of the Crown is a definite possibility here. However, if [A] merely reads an open letter without touching it, [B]'s suit will fail because there has been no direct interference with the letter. It does not matter that [B]'s complaint is basically the same in both cases. [A] is liable in the first instance not for his assault on [B]'s privacy, but for his interference with [B]'s chattels. This type of analysis would apply equally to such articles as diaries or personal financial records. The law concerning trespass to chattels applies to all types of personal property — cars, furniture, pens, etc. Mail is a special kind of chattel and is dealt with by federal statute as well as at common law. As well as being a chattel, mail is a form of communication. Interference with private communications will be considered next.

257 See Salmond on the Law of Torts, ed. R.F.V. Henson (15th ed. London: Sweet and Maxwell, 1969) at 118-21.

2. Private Communications

Two aspects of private communications are considered here, the first being the interception of such communications. This aspect is fairly rigidly controlled as far as other members of the private sector are concerned. Once again, however, governments have special rights and powers. The second aspect relates to the divulging of private communications once they have been made or intercepted. This aspect is more confusing legally than the first, but it would appear that government is in a special position here as well.

a) Interception

Interception of private communications relates to the collecting of information and not to the disclosure of information which has been legally collected by government. Interception of communications is the subject of federal law; primarily, the Criminal Code and the Post Office Act. While this is also an important privacy concern, it has little to do with the problems of balancing freedom of information and individual privacy.

1) Criminal Code: Invasion of Privacy

The "invasion of privacy" section of the Criminal Code is restricted to the regulation of interceptions of private communications using electromagnetic, acoustic, mechanical or other devices.²⁵⁸ The offence is an indictable one, and imprisonment may not exceed five years. The interception is not an offence where:

- 1) one of the parties has consented to the interception,
 - 2) the interception has been authorized by a judge pursuant to special rules,
 - 3) the interception is made by a telephone company employee in special circumstances, or,
 - 4) the interception is made by a federal government employee monitoring radio frequencies.
- 259

It is an offence to disclose to anyone the contents or existence of any private communication unlawfully intercepted.²⁶⁰ Exceptions to this are provided for court proceedings where the contents of the private communication would constitute admissible evidence.²⁶¹ Other more narrow exceptions are also provided for, such as disclosure to

258 Criminal Code. R.S.C. 1970, c. C-34, s. 178.11. Section 178, which comprises Part IV.1 of the Code was introduced by the Protection of Privacy Act, S.C. 1973-74, c. 50.

259 Id., s. 178.11(2) (a) to (d).

260 Id., s. 178.20(1).

261 Id., s. 178.20(2) (a).

peace officers.²⁶² Damages up to \$5,000.00 may be paid to any aggrieved person by someone convicted under this section.²⁶³ Penalties of this sort are not available against the federal Crown for offences committed by its servant.²⁶⁴ If [A], a UIC investigator, taps [B]'s telephone without consent or authorization, [B] would likely be awarded damages, payable by [A] in his personal capacity only.

Provincial civil servants are subject to the same responsibilities under the Criminal Code as anyone else. Although the individual civil servant may be liable to conviction and the payment of \$5,000 punitive damages, clearly the provincial Crown is not subject to vicarious liability. In fact, it is illegal for a person to compensate someone else for payment of a fine under the criminal law. This does not prohibit the institution of a civil action against the provincial Crown for a violation of this nature. While the provisions of the Criminal Code will not provide grounds for a civil action, clearly other grounds may be found, such as the common law action of trespass.

It appears then that the "invasion of privacy" portion of the Criminal Code will be of little assistance to a person wishing to influence

262 Id., s. 178.20(2) (e).

263 Id., s. 178.21(1).

264 Id., s. 178.21(2). For a general assessment of the "Invasion of Privacy" part of the Code, see Burns, P., A Retrospective View of the Protection of Privacy Act: A Fragile Rede is Recked (1979), 13 U.B.C.L. Rev. 123.

disclosure by the Ontario government of information concerning himself.

Written communications are dealt with to a degree by the Post Office Act.

2) Federal Post Office Act

According to the Post Office Act,²⁶⁵ mail becomes the property of the addressee once it is deposited in the mail. As a result, the addressee has a property interest in the mail which will be protected by the common law. Interference with mail will give rise to an action for trespass to chattels.²⁶⁶ An offender is subject to criminal sanctions under the Act as well. Stealing from the mail²⁶⁷ or stopping the mail with intent to rob or search it²⁶⁸ are criminal offences with serious penalty provisions. Thus, although privacy interests are not protected directly, they are protected incidentally through the creation of a property interest.

265 R.S.C. 1970, c. P-14.

266 See Section Part E, #1(d), "Trespass to Chattels or Personal Privacy," supra.

267 Criminal Code, s. 314.

268 Id., s. 304.

The statutory prohibitions apply, of course, to provincial civil servants. If a civil servant tampers with the mail, he will be personally subject to the criminal sanctions which are provided for in the Act.²⁶⁹ Because he has interfered with a property interest, the civil servant will be personally liable in a civil action as well. If he was acting within the course of his employment, the Crown may be subject to tort liability according to the provisions of The Proceedings Against the Crown Act.²⁷⁰

b) Divulging

It is provincial law which deals more directly with the divulging of contents of private communications. The applications of law in this area are of possible interest in assessing the existing legal balance between disclosure of government information and individual privacy. The Telephone Act and the law of privilege may be used to prevent the contents of private communications from being divulged to people in the private sector. However, they will not be particularly helpful in the context of preventing disclosure of an individual's communications with the government.²⁷¹

269 Post Office Act, s. 58.

270 R.S.O. 1970, c. 365.

271 Areas which may have some impact in this area are dealt with in Part F, i.e. breach of confidence, etc.

1) The Telephone Act (Ontario)

The Telephone Act²⁷² prohibits the divulging of the contents of telephone calls by someone who was not intended to be a party to the call but who learns what was said. Practically speaking, the amount of information about individuals that the government gains as a result of overhearing telephone conversations will no doubt be so miniscule as to be nonexistent. In any event, the prohibition contained in the Act does not apply to a person who has been "lawfully authorized or directed" to divulge what he has learned. Ontario civil servants are employees of the Crown. The Crown is not bound by the terms of The Telephone Act since the Act does not expressly refer to the Crown. It would therefore be questionable as to whether a civil servant, who has been authorized or directed to divulge the contents of a telephone call to which he was not intended to be a party, would be liable to prosecution under The Telephone Act.

We will now turn to an examination of the law of "privilege" to determine the extent to which it may be used by individuals to control the flow of information which has been communicated to government.

272 R.S.O. 1970, c. 457, s. 112.

2) Privilege

"Privilege" is a word used in law to denote a special kind of treatment in the context of court cases. It is used in more than one sense. A privilege may attach to certain communications, such as those between a solicitor and his client. The privilege is that the courts will not force a solicitor to divulge his client's communications unless the client consents or other very special circumstances exist.²⁷³ Another type of privilege attaches to communications made as a result of a public duty, but which turn out to be defamatory. The fact that the writer had a public duty to make the statements will give the writer a qualified privilege, to the extent that he cannot be successfully sued for the defamation.²⁷⁴

Crown privilege is not helpful in the context of preventing the government from releasing information about individuals.²⁷⁵ The privilege is that of the government, in the public interest, not to produce information in court. An individual may draw the possibility of Crown privilege to the court's attention, but it would seem unlikely

273 For example, if a solicitor is plotting a crime in partnership with his client.

274 See Toogood v. Spyring (1834), 1 Cr.M. & R. 181, 149 E.R. 1044; Kine v. Sewell (1838), 3 M. & W. 297, 150 E.R. 1157, an accusation of crime in answering a police officer's questions; Salmond on the Law of Torts, supra note 257, at 214-15.

275 See Chapter II, Part E, "Withholding Government Information from Court Proceedings," supra.

that a court would declare information protected by Crown privilege if the government wished to produce the information.

The aspect of privilege of interest in the context of privacy and disclosure of government information is the ability of a person to stop someone else from revealing information in court. Existing law allows a client to stop his lawyer from divulging information, and spouses can also claim privilege concerning their communications. Existing Ontario law does not recognize any privilege of this type concerning communications between an individual and government. If an individual provides information about himself to the Ontario government, he will not be able to stop the government from making that information public in court. Recent case law and law reform proposals indicate that it is unlikely any privilege in this area will be recognized.

i) Existing Law

As we will see in the breach of confidence discussion, the law will act to protect a citizen's confidentiality in a wide variety of relationships and situations, in the normal course of events. Where information is required for the purpose of the fair and proper administration of justice in the courts, the areas of confidentiality which will be protected become very limited.

The general rule is that anyone who is summoned to give evidence in court must do so. The rule is stated well by Lacourciere J.A. of the Ontario Court of Appeal:²⁷⁶

The function of a court of law being to arrive at the truth of the matter in dispute, all evidence relevant to the issue ought to be heard, unless the matters to be proved are so remote that it is not worthwhile to let them be proved, or, in a criminal case, the prejudicial effect so far outweighs the probative value that it would be unfair to the accused, and so detract from the search for the truth. And it follows from this that "Every person in the kingdom except the sovereign may be called upon and is bound to give evidence to the best of his knowledge upon any question of fact material and relevant to an issue tried in any of the Queen's courts, unless he can show some exception in his favour ... Exp. Fernandez (1861), 10 C.B. (N.S.) 3 at p. 39, 142 E.R. 349. All this is implicit in the "rule of law".

The exceptions to this general rule are limited to the following:

- a) Husband/wife privilege based on the social policy that mutual trust and confidence of spouses be fostered in the interests of maintaining the institution of marriage.
- b) Solicitor/client privilege based on the social policy that freedom of consultation with legal advisors in the defence of legal rights is necessary for the effective and fair administration of justice.

276 Reference re Legislative Privilege (1978) 18 O.R. (2d) 529, at 534-5. Elected member Ed Ziemba claimed a privilege for communications made to him by a constituent and refused to testify to certain matters in a criminal trial. The court denied that such a privilege exists.

- c) Privilege relating to the deliberation of a jury based on the social policy that this secrecy is necessary in the administration of justice.
- d) Crown privilege relating to government documents.
- e) An extension of Crown privilege in the public interest to protect from disclosure the identity of police informers,²⁷⁷ subject to the exception where the identity of the informer could help to show the defendant is innocent of the offence charged, and in that case disclosure of the informer's identity will be compelled.

The Ontario Court of Appeal summed up the basis for all these types of privilege as follows:²⁷⁸

We adopt the apt words of Lord Simon of Glaisdale in D. v. National Society for Prevention of Cruelty to Children, (1977), 2 W.L.R. 201 at pp. 221-2: These various classes of excluded relevant evidence may for ease of exposition be presented under different colours. But in reality they constitute a spectrum, refractions of the single light of a public interest which may outshine that of the desirability that all relevant evidence should be adduced to a court of law. (emphasis added)

277 The "police informer privilege" has been held, in England, to apply to names of informants of public bodies established to control illegal gambling, and the National Society for the Prevention of Cruelty to Children (D. v. National Society for the Prevention of Cruelty to Children, [1977] 2 W.L.R. 201, [1977] 1 All E.R. 589), essentially on the grounds that these bodies are like police for these purposes.

278 Reference re Legislative Privilege (1978), 18 O.R. (2d) 529, at 537.

The courts appear to be reluctant to extend the application of privilege beyond the five categories outlined above. In England, Lord Denning has attempted to make some inroads in the apparently restricted law of privilege by developing a concept akin to a privilege based on confidentiality.²⁷⁹

The House of Lords has not approved granting privilege to stop production of material in court on the basis of confidentiality. The House of Lords acknowledges that a judge has a considerable moral authority in the conduct of a trial and may suggest to counsel that he not press his demands for production of information in cases where relationships of doctor/patient²⁸⁰ or priest/pentitent²⁸¹ are involved, but that if the matter is pressed, then the judge has no discretion to refuse to order production.²⁸²

The Ontario Court of Appeal has interpreted the House of Lords decisions to mean that:

279 See Alfred Crompton Amusement Machines Ltd. v. Customs and Excise Commissioner (No. 2), [1972] 2 All E.R. 353 (C.A.); Norwich Pharmacal Co. v. Commissioners of Customs and Excise, [1973] 2 All E.R. 943.

280 Dembie v. Dembie, April, 1963, Ont. S.C. (unreported, but discussed in (1964-65) 7 Crim. L.Q.).

281 Cronkwright v. Cronkwright (1970), 14 D.L.R. (3d) 168 (Ont. H.C.).

282 D. v. National Society for the Prevention of Cruelty to Children, supra note 277.

there is no recognized discretion to exclude relevant and admissible evidence based on confidentiality alone.
(emphasis added)

283

In most recent cases dealing with privilege, the analysis of the doctrine of privilege contained in Wigmore on Evidence has been referred to, and generally approved.²⁸⁴ If the law as set out in Wigmore becomes the test as to whether or not a privilege is to be recognized, then it is quite possible that the relationships that might support a claim for privilege may grow in number. Recent Canadian case law, however, suggests some hesitancy to embrace the Wigmore test.

283 Reference re Legislative Privilege, supra note 276.

284 Wigmore on Evidence, ed. McNaughton (Boston: Little, Brown, 1961) Vol. 8 at 531:

Looking back upon the principle of Privilege ... four fundamental conditions may be predicated as necessary to the establishment of a privilege against the disclosure of communications between persons standing in a given relation:

- 1) The communications must originate in a confidence that they will not be disclosed;
- 2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
- 3) The relation must be one which in the opinion of the community ought to be sedulously fostered; and
- 4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

These four conditions being present, a privilege should be recognized; and not otherwise.

In 1978, the Supreme Court of Canada considered the extension of privilege on the basis of confidentiality but failed to pronounce conclusively on the issue.²⁸⁵ Recently in Ontario, both the Court of Appeal²⁸⁶ and the Divisional Court²⁸⁷ have refused to treat confidentiality as a ground for the extension of privilege.

ii) Proposals for Reform

The Law Reform Commission of Ontario considered the law of privilege in its Report on the Law of Evidence.²⁸⁸ It was recommended that the privilege relating to marital communications be abolished (H. Allan Leal, Q.C., dissenting). The Law Reform Commission further recommended that the doctrine of privilege not be extended to other relationships where confidential communications are made, and pointed out that

285 Slavutych v. Baker [1976] 1 S.C.R. 254, (1975) 55 D.L.R. (3d) 224.

286 Reference re Legislative Privilege, 1978, supra note 276.

287 In the Matter of The Public Inquiries Act, 1971, unreported, June 30, 1978, Divisional Court of Ontario, Osler, J. This case concerned a request of the Royal Commission on the Confidentiality of Health Records in Ontario, that wanted the RCMP to identify sources of information which the force claimed to be the subject of a privilege.

288 Ontario Law Reform Commission Report on the Law of Evidence (Toronto: Ministry of the Attorney General, 1976).

privilege is not based on the notion of confidence.²⁸⁹ In view of the case law referred to above and the recent Law Reform Commission Report, it would seem unlikely to see any great expansion of the privilege doctrine in Ontario in the near future. The state of Ontario law, at the moment, appears to be that any attempt to claim a new privilege for information communicated in confidence will probably fail. To this extent the privacy of an individual regarding communications outside the five areas of recognized privilege is unprotected if evidence of those communications is required in a court of law. Communications between an individual and government normally fall outside these five recognized areas.

It should be noted that exceptions to the rules on privilege may be made by statute. Thus, a board or tribunal of the province may have

289 Id., at 145-146:

Representations have been made to us that the privilege which exists between a solicitor and his client should be extended to communication between accountants and their clients, newsmen and their sources of information, physicians and their patients, and clergymen and members of their congregations. None of these relationships are fundamentally or historically the same as that which exists between the solicitor and his client. The argument put forward is that they are all based on confidence; however, as we have pointed out, the solicitor and client relationship is based not on confidence, but arises necessarily out of the basic right of the client to equality before the law. The extension of a statutory privilege to any of the relationships we have mentioned would result in closing to the judicial process wide areas in its search for truth. We have come to the conclusion that this consideration outweighs the arguments put forward in favour of providing statutory protection for the relevant communicants.

more power than the Supreme Court of Canada when it comes to extracting information from an individual. The courts must respect privilege. The Ontario Energy Board and the Succession Duty Branch, among others, can compel a person to reveal communications which would normally be privileged.²⁹⁰ There is, however, no implied power given to a board or tribunal to override privilege. This power must be given by a statute and it must be in clear language.²⁹¹ Privilege can also be extended by statute. The Highway Traffic Act²⁹² grants privilege to certain medical reports filed under the Act. This is relatively rare.

3. Publicity Placing a Person in a False Light

This section will deal briefly with the situation in which one person makes untrue statements in public about another. The central concern for individual privacy in the context of freedom of information is, of course, release of true statements about people. While the law dealing with false statements is related, it is not particularly helpful or relevant to the main focus of this chapter. In Ontario, when a person

290 The Ontario Energy Board Act, R.S.O. 1970, c. 312, s. 54(2); see also sections 14, 51, 52, 54(1), 56. The Succession Duty Act, R.S.O. 1970, c. 449, s. 29(3); see also sections 27(2), 29(1), (4).

291 Joe Clark et al. v. A.G. of Canada, S.C.O., Evans, C.J.H.C.; November 9, 1977, unreported, citing Re Director of Investigations and Research and Shell Canada Ltd. (1975) 55 D.L.R. (3d) 713 (F.C.A.).

292 R.S.O. 1970, c. 202, ss. 143, 144.

is caused injury by the false statements of someone else, there are different bases for filing a law suit, depending upon the kind of harm suffered. Assume [X] makes public untrue statements about [A].

a) Defamation

If the statements defame [A] and tend to lower [A]'s estimation in the eyes of a substantial and respectable group of the community, then [A] can sue for defamation.²⁹³ It doesn't matter whether or not [X] intended to defame [A]. If defamation is the effect, then [X] is liable.²⁹⁴

b) Injurious Falsehood

If the statements are dishonestly or otherwise improperly made, and [A] suffers actual monetary loss, then [A] may sue on the basis of "injurious falsehood."²⁹⁵

293 Fleming, The Law of Torts, supra note 235, at 529.

294 See Capital & Counties Bank v. Henty, [1881-85] All E.R. Rep. 86, (1882) 7 A.C. 741 (H.L.); Fraser v. Sykes (1971), 19 D.L.R. (3d) 75 (Alta. C.A.).

295 Royal Baking Powder Co. v. Wright, Crossbey & Co. (1901), 18 R.P.C. 95, at 99 per Lord Davey.

c) Criminal Code: Defamatory Libel, etc.

The Criminal Code²⁹⁶ incorporates the notions of defamation (s. 264-266), injurious falsehood and wilful act causing harm and mental suffering (s. 330(1)), and makes such actions crimes as well as bases for civil law suits.

d) False Statements and Privacy

In the United States, the concept of placing someone in a false light has been developed as a part of the law on privacy.²⁹⁷ The cases dealing with this notion have in some instances involved situations where appropriation, for the defendant's advantage, of the plaintiff's name or likeness was the central issue. Some of the aspects of defamation and injurious falsehood are also included in the "false light" doctrine. This tort, as a basis for a law suit, was developed by the American courts and is largely based on concepts and principles derived from English and other common law cases.²⁹⁸ Canadian and British courts have been shy in this area of development. No such expensive remedy or cause of action exists in Ontario.

296 R.S.C. 1970, c. C-34.

297 Prosser, Privacy, supra note 232.

298 For a detailed analysis of the growth of this tort, see Glasbeek, Outraged Dignity, supra note 211, and Prosser, Privacy, supra note 232.

In legal academic discussions and government reports concerning privacy, the above concepts are usually referred to when legal protections of privacy are discussed. It is usually noted,²⁹⁹ however, that these aspects of the law actually have little or nothing to do with the privacy of the individual.

Three aspects of these legal remedies tend to lessen their impact on privacy. First, the concerns at the base of defamation deal with the effect of false information on the public mind, whereas privacy concerns itself with effects on the individual's mind. Second, and more important, these remedies presuppose false statements. Truth of the statements involved is a good defence to any action brought under these heads. These areas of law cannot really be characterized as dealing with privacy at all, since privacy invasion or breaches of confidence essentially relate to the discovery or publication of true facts. Third, actual monetary loss must be suffered in order to succeed in a suit for injurious falsehood. That is, the privacy aspect is not relevant to this tort, only the commercial or monetary aspect. Injured feelings or "outraged dignity" are not the interests that the law on defamation and injurious falsehood protects.

299 See Glasbeek, Outraged Dignity, supra note 211, at 78; the Younger Report, supra note 222, at 21; Burns, Privacy and the Law - The Canadian Experience, supra note 224.

Only certain very specific kinds of false statements will form the basis of a successful law suit. Even some of these kinds of statements may be made with impunity if the maker can establish that the statement was a fair comment on a matter of public interest. Proceedings in the legislature are presumed to be of public interest.³⁰⁰ Construction of a shopping centre,³⁰¹ circumstances surrounding the appointment of a senator,³⁰² and the relationship between a landlord and his tenants³⁰³ have been held to be matters in the public interest.

The distinction between fact and comment is not a clear one. In her political memoirs, Bird in a Gilded Cage, Judy LaMarsh made the parenthetical assertion that a Mr. Murphy was "heartily detested" by most of his colleagues in the Parliamentary Press Gallery and by most members of Parliament. No anecdotes or other facts were presented to support the statement. The court ruled that standing alone, the statement is one of fact and not opinion. Interestingly, the court considered that because the statement was in parentheses, the imputation that the statement was intended to be factual was clear.³⁰⁴

300 Cook v. Alexander, [1973] 3 All E.R. 1037 (C.A.) per Lord Denning, at 1041-42.

301 Fraser v. Sykes (1971), 19 D.L.R. (3d) 75 (Alta. C.A.).

302 Lawson v. Burns (1975), 56 D.L.R. (3d) 240 (B.C.S.C.).

303 Myerson v. Smiths Weekly (1923), 24 S.R. 20 (N.S.W.).

304 Murphy v. LaMarsh (1971), 18 D.L.R. (3d) 208 (B.C.C.A.).

The distinction between fact and comment is a critical one in light of the following statement made in the judgment in Whitford v. Clarke:³⁰⁵

The statements complained of were not statements of fact but of opinion and the criticism, although intemperate and unjust, was not such as no fair-minded person could entertain, and according the defence of fair comment has been established.

Apparently the courts will allow a great deal of latitude in deciding whether or not a comment is "fair."

A question arises as well in the case where out-of-date or inaccurate information is made public by the government. There may be liability for damage caused by such release, if that information is voluntarily released. The situation is less clear when a statute requires civil servants to release certain kinds of information.

Factors such as those raised here do not go to the question of whether certain private or confidential information should be made public. Such concerns may force those who make information public to be careful about the accuracy and currency of that information, but these factors are not very effective as protections of an individual's privacy. Moreover, the Younger Report saw the law on defamation, etc., as providing limitations and safeguards for the exercise of freedom of speech:

To our mind there could be a real threat to freedom of speech if the safeguards for it that have been built into the law

305 [1939] S.A.S.R. 434 (S.A.S.C.).

of defamation were to be put in jeopardy by the process of subsuming defamation into a wider tort which is implied by the doctrine of "false light." We believe that the concepts of defamation and intrusion into privacy should be kept distinct from one another. (emphasis added)

306

4. Appropriation of Personality

This is an area of the law designed to protect the commercial aspects of one's personality.³⁰⁷ A person's name or picture might be used in connection with advertising a particular product without that person's consent. In such a case, that person could sue the advertiser on the basis of appropriation, for the defendant's advantage, of name or likeness. Similarly, if someone attempts to pass off his goods as being those of someone else, then a lawsuit could follow.

This area of law would appear to give a degree of protection to the privacy of famous and celebrated people. These commercial aspects of privacy, however, do not relate closely to the questions surrounding the possible invasions of individual privacy resulting from the release of government-held information. Some areas that might be relevant to these issues will be discussed in the following part.

306 Younger Report, supra note 222, at 21.

307 For a more detailed discussion, see Rowan, Privacy and the Law, supra note 228.

F. Some Possible Protections from
Disclosure of Government Information

Some aspects of present Ontario law might be useful to restrict the government's release of information concerning individuals, or to compensate individuals for injury suffered as a result of the release of information about them. These areas will now be examined: wilful acts causing harm and mental suffering, breach of contract, breach of confidence, and statutory secrecy provisions.

Two major problems exist regarding all of these areas. First, these aspects of the law have not been developed, or even used, in the context of the protection of individual privacy and the release of government information. Thus, any comments about their applicability must be in the nature of conjecture. Secondly, their potential effectiveness, in practical terms, is severely limited by the special legal status of government and the difficulty inherent in any court action against the Ontario government.

1. Wilful Act Causing Harm and
Mental Suffering

The limits of this common law tort are uncertain. This tort has been used in various different situations to give relief to people who have suffered mental distress and physical harm as a result of the actions of others.

Whether this action could be utilized in a case where government releases true information about a person is a question which has never been considered in reported cases. Suppose, for example, the fact that a mother was receiving family benefits were made public and the embarrassment caused the mother such great distress that she became sick. Could the mother sue the Ontario government or its employees?

Wilkinson v. Downton³⁰⁸ is the case which provided the starting point for development of the law in this area. As a practical joke, the defendant falsely told the plaintiff that her husband had been injured. The plaintiff became ill as a result of the shock. The court in this case imposed a requirement that physical harm accompany the mental suffering. The conventional wisdom is that physical harm is still a requirement for recovery.³⁰⁹ In Wilkinson v. Downton, the act was "calculated" to cause harm. Some mental element is apparently still necessary. Glasbeek states that:

... reluctant though our courts may have been to award damages in the absence of physical injury, they have been

308 [1897] 2 Q.B. 57. The plaintiff actually succeeded on the basis of an action for deceit.

309 Glasbeek, Outraged Dignity, supra note 237 at 90; Burns, Privacy and the Law, supra note 224, at 20; the Younger Report, supra note 222, at 272; although both Rowan and Burns indicate that the recent case of Marshall v. Lionel Enterprises Inc., [1971] 2 O.R. 177 may erode the necessity for proof of physical harm. There are indications that physical harm may not be necessary in negligence cases and that in some instances foreseeability of result of mental shock may lead to recovery (see Glasbeek, at 98, citing Chadwick v. British Railways Board, [1967] 1 W.L.R. 912),

easily satisfied as to the existence of the intent requirement of the tort.

310

Recklessness and negligence can be seen to be growing as equivalent mental ingredients for recovery.³¹¹

This tort action is applicable with regard to many forms of activity that may cause mental suffering.³¹² The most interesting case for our purposes is the 1937 case of Barnes v. Commonwealth,³¹³ from Australia. A government body was sued for negligently informing the plaintiff that her husband had been committed to a mental institution, and the plaintiff succeeded in the action. The case establishes that a government may have some liability in this area.

If other elements of the tort can be put together in the following fashion, the government may be liable for damages caused by release of

310 Glasbeek op.cit. at 90.

311 See Barnes v. The Commonwealth (1937), 37 S.R. 511 (N.S.W.) (government negligent in sending a form letter to plaintiff indicating that her husband was committed to mental health facilities) and Bielitski v. Obdiak (1922), 15 Sask. L.R. 153; 65 D.L.R. 627 (defendant falsely told people that plaintiff's son had committed suicide and the plaintiff suffered anxiety when the story reached her).

312 See Bunyan v. Jordan (1937), 57 C.L.R. 1 (defendant negligently fired a gun, causing illness and shock to plaintiff), and Purdy v. Woznesensky [1937] 2 W.W.R. 116 (plaintiff was present when defendant beat up her husband and she suffered shock and physical harm).

313 (1937), 37 S.R. 511 (N.S.W.).

true information about individuals. Assume the government is reckless in releasing family benefits information to the public. That is, the officials involved do not care whether someone suffers embarrassment or distress as a result of the information being made public. This might satisfy the mental requirement of the tort, if one makes the assumptions that a normal person would be upset at the public release of the information, and that those releasing the information were under no duty to do so. It should be emphasized that this would indeed be a novel use of the action and no authority exists to indicate that the plaintiff would be successful in redressing an invasion of privacy by means of a lawsuit for a wilful act causing harm and mental suffering.

2. Breach of Contract

Where the confidential nature of information is an express term of a contract, the courts will use their authority to enforce that term of the contract, just as they would enforce any other term (provided, of course, that the contract or term is not in and of itself contrary to public policy, e.g., a contract to murder another person). Damages or an injunction will be available as remedies for the breach of contract.³¹⁴

314 Ansell Rubber Co. v. Allied Rubber Industries, [1967] V.R. 37.

The contractual relationship has been recognized by the courts as one in which it is appropriate, in many cases, to protect confidentiality. The law regarding breach of confidence is imported into the area of contract law. It will be assumed as an implied term of contracts that rules regarding confidentiality apply, unless the particular contract expressly declares them inapplicable.

For example, in Pollard v. Photographic Company,³¹⁵ a commercial photographer had been hired to take pictures of the plaintiff. Without permission, the photographer made copies from the negatives and was using the pictures in his business. An injunction stopping the activity was granted on the grounds that the photographer had breached an implied term of the contract. This is a relatively clear example of the use of contract law and analysis to protect privacy interests.

In Argyll v. Argyll,³¹⁶ it was held that if it were necessary to establish a contract in order to stop the husband from disclosing confidences of the wife, then it could be implied as a term of the marriage contract that confidential information would not be disclosed to the world. In this case a court order was made restraining the former husband of the Duchess of Argyll from publishing some gossip material about his ex-wife.

315 (1888), 40 Ch. D. 345.

316 [1965] 1 All E.R. 611, [1965] 2 W.L.R. 790 (Ch. D.).

It would be relatively rare, in the course of a citizen's normal dealings with the government, that a contractual relationship between the citizen and government would exist. At least it would be rare in the non-business context and in situations where concerns about individual privacy are raised. The citizen/government relationship in many contexts is not "contractual" in a legal sense, but would seem to fall within the category of what most people would probably consider "confidential." The law will protect confidences in relationships where there has not been any express, legally binding promise of confidentiality. Certainly in the contractual relationship the courts will imply that a term of confidentiality is contained in the contract and will enforce that term just as if it had been written down and signed by both parties. It would be argued, then, that the citizen/government relationship should be one giving rise to a legally enforceable right to confidentiality, thus giving the individual some measure of control over private and personal information which the government accumulates in the course of its activities. Such a right could be given by statute. At present only one statute in Ontario gives a clear right to sue for damages for breach of confidentiality. The Assessment Act³¹⁷ contains a unique section expressly conferring a right to sue for damages, in the event that a government employee releases confidential information to the public.

317 R.S.O. 1970, c. 32, s. 79.

Before we examine other statutory provisions that provide some protection of privacy, we will consider the law on breach of confidence as it relates to the Ontario government.

3. Breach of Confidence

a) History of the Action

The tort of breach of confidence has no statutory base. It is purely a creature of common law and has been developed over time in the context of various court cases. Basically, the action provides a right of recourse against unauthorized disclosure or use of information which has been given to another person in circumstances which impose an obligation to respect confidentiality.

The law in this area has no clear basis. The Law Commission of England³¹⁸ quotes Gareth Jones:³¹⁹

A cursory study of the cases, where the plaintiff's confidence has been breached, reveals great conceptual confusion. Property, contract, bailment, trust, fiduciary relationship, good faith,

318 Law Reform Committee, Working Paper No. 58, Breach of Confidence (London: H.M.S.O., 1974).

319 Jones, G., Restitution of Benefits Obtained in Breach of Another's Confidence (1970), 86 L.Q.R. 463.

unjust enrichment have all been claimed, at one time or another, as the basis of judicial intervention. Indeed, some judges have indiscriminately intermingled all these concepts.

The Law Commission then goes on to conclude that the modern action of breach of confidence is probably not a part of any particular branch of the law.

One of the basic cases in the development of this area of the law has been said to be the case of Prince Albert v. Strange.³²⁰ The Queen's Printer's assistant passed copies of some etchings, done by Prince Albert and Queen Victoria, to a Mr. Strange. Mr. Strange advertised an exhibition of the works and publication of a catalogue. Strange was restrained from publishing the etchings without the consent of their author, even though Strange was not privy to the original confidence. This case was used by Warren and Brandeis in their famous article, "The Right to Privacy"³²¹ as authority that some kind of legal right to privacy did exist. The case report itself seems to deal more with concepts of property than privacy and confidentiality. However, be that as it may, the case has been interpreted and developed in the United States as part of the law of privacy, while in England and Canada the case has had a place in the evolution of the law on breach of confidence.

320 (1849), H. & Tw. 1, 47 E.R. 302. See Baxter, Privacy in Context: Principles Lost or Found (1977), Cambrian L. Rev. 7, at 14.

321 (1890), 4 Harv. L. Rev. 289.

b) Modern Development of the Action

Modern development of this tort has been primarily in the commercial context, dealing with trade secrets and industrial information.³²²

The legal duty in the area of breach of confidence is summed up by Lord Denning, M.R. in Fraser v. Evans:³²³

The jurisdiction [to restrain publication of confidential information] is based not so much on property or contract, but rather on the duty to be of good faith. (emphasis added)

This duty to be of good faith has been expressed in other ways, relating to the various contexts of breach of confidence cases brought before the courts. In Seager v. Copydex³²⁴ the principle was stated as:

He who has received information in confidence shall not take unfair advantage of it.

322 See Saltman Engineering Co. v. Campbell Engineering Co., [1948] R.P.C. 203; Terrapin Ltd. v. Builder's Supply Co. (Hayes) Ltd., [1960] R.P.C. 128; Seager v. Copydex Ltd. [1967] 2 All E.R. 415, [1967] 1 W.L.R. 923 (C.A.). The breach of confidence action has been used most often in the commercial context. The difficult questions of what exactly gives information its confidential quality, what particular characteristics of a relationship make it one attracting confidentiality, and the calculation of the amount payable as damages for breaching confidentiality, as well as the extent to which the courts will impose restrictions on the use of information received by innocent third parties as a result of a breach of confidence, is examined by S. Soloway, op.cit., supra note 203.

323 [1969] 1 Q.B. 349, [1969] 1 All E.R. 8 (dealt with a consultant's report to the Greek government), at 361 (Q.B.), (All E.R.).

324 Supra note 322, at 417 (All E.R.), 931 (W.L.R.) per Lord Denning M.R.

As one commentator has noted:³²⁵

... the essence of the duty of the recipient of confidential information is not to use the information without paying for it, at least in the commercial and industrial spheres, though in other spheres, such as marital communications, the duty may be the wider one not to use the information without consent. (emphasis added)

c) Relationships Giving Rise to Confidence

There is no particular relationship which gives rise to an obligation of confidence. Certainly the obligation can arise without any contractual relationship existing.³²⁶ Megarry J. has suggested that the test for determining whether a confidential relationship exists would be in those situations where a reasonable man would say it existed.³²⁷

325 North, Breach of Confidence: Is There a New Tort? (1972), 12 J. Soc. Pub. Teach. L. 149, at 164.

326 See Saltman Engineering, supra note 322 (defendant received plans for manufacture of leather punches from a person who breached a contractual confidence -- although the defendant was not party to the contract, he was held in breach of confidence); or Seager v. Copydex Ltd., supra note 322 (parties in course of negotiation).

327 Coco v. A.N. Clark (Engineers) Ltd. [1969] R.P.C. 41 (dealt with information relating to the manufacture of a moped engine).

d) Defence to the Action

The exact nature of the defence to an action for breach of confidence is unclear. In Gantside v. Outram an employer sought to stop an employee from releasing information that indicated the employer was doing business fraudulently. The employer claimed that release of the information would be a breach of confidence. The court stated that "there is no confidence as to the disclosure of iniquity,"³²⁸ and refused to grant the injunction.

In a later case,³²⁹ a client sued his accountant for carelessly breaching confidence by allowing a libellous letter to come into the hands of the person libelled. The defendant accountant argued that the libel was iniquity and therefore the breach of confidence action should fail. The courts rejected this argument, distinguishing between private wrongs such as a breach of contract or libel, and cases involving a public duty or danger to the state.

In England, Lord Denning has attempted to develop a test for the defence of "just cause" for breach of confidence. In three recent cases, the test has been phrased in terms of "in the public

328 (1856), 26 L.J. Ch. 113, at 114.

329 Weld-Blundell v. Stephens, [1919] 1 K.B. 520; [1920] A.C. 956, [1920] All E.R. Rep. (H.L.).

interest."³³⁰ The vague test is apparently the accepted definition of the defence to a breach of confidence action. In Initial Services v. Putterill³³¹ the "public interest" defence was used to justify the release of information obtained in confidence to the effect that a group of firms had acted contrary to the Restrictive Trade Practices Act, among other things.

It is possible that the breach of confidence action may provide some protection for those individuals who wish to restrict the government in making certain information public. However, such protection is by no means great and by no means certain, as we shall see by examining some of the difficulties in applying the law for breach of confidence to the citizen/government relationship.

e) Some Problems in the Government Context

The extent to which the breach of confidence action provides protection against unauthorized disclosure of personal information is unclear. The two major cases in recent times that discussed breach of confidence outside of the industrial secrets context dealt with marital

330 See Initial Services Ltd. v. Putterill, [1968] 1 Q.B. 396, [1967] 3 All E.R. 145; Fraser v. Evans, supra note 323, both cited in the English Law Committee Working Paper No. 58; Breach of Confidence, supra note 318, at 29-30.

331 [1968] 1 Q.B. 396.

confidences³³² and a contract consultant's report to a foreign government.³³³ Neither case sheds much light on the general questions surrounding the government's handling of personal information.

One of the major reasons for the lack of breach of confidence cases in the personal privacy area is the lack of financial interest that people generally have in relation to information about themselves. The financial burden of a court case becomes a great deterrent to litigation if there is no strong financial interest in the subject matter. Breach of confidence cases reported to date reflect concern for the commercial value of certain types of information, concern for fair play and certainty in business dealings, and even concern for the maintaining of marital confidences as an integral part of the institution. No reported cases relate to the individual privacy concerns which are important in the freedom of information context, and no reported cases were found in our research in which the government had been sued for breach of confidence.

This poses a problem, since the question of the extent to which the Ontario government might be able to use the defence of "in the public interest" is left unanswered. The supposed justification for all acts of government is that such acts are in the public interest.

332 Argyll v. Argyll, supra note 316.

333 Fraser v. Evans, supra note 323.

Determination of the balancing point between this very broad notion of "public interest" and the types of "public interest" which might justify a breach of confidence has not yet been attempted by our courts.

In order to use the law on breach of confidence against the government it would be necessary to sue on the basis of a tort having been, or about to be, committed. Suing the government of Ontario for a tort, practically and procedurally, is extremely difficult. For this reason alone, the law on breach of confidence is extremely limited as a practical or effective protection of privacy vis-a-vis the provincial government. The difficulties in suing the government, or Crown, will be dealt with later in this chapter.

The common law provides little in the way of concrete protection or control over government information about individuals. The statute law of the province will now be considered in this context.

4. Statutory Secrecy

A large number of statutes contain sections requiring civil servants to keep information secret. These sections have been considered in the "Secrecy of Government Information" section of this paper. These statutory secrecy sections represent the closest thing to direct protection of individual privacy interests that the law of Ontario

affords. (A complete list of these sections can be found in Appendix A.)

a) Description

The majority of these acts make it an offence, punishable on summary conviction, for any civil servant to contravene the secrecy provision. Many of the statutory restrictions are seemingly designed to protect the privacy of those who supply personal information to the government.³³⁴ Acts such as The Real Estate and Business Brokers Act,³³⁵ The Motor Vehicle Dealers Act,³³⁶ and The Collection Agencies Act,³³⁷ contain sections designed to protect the confidentiality of financial statements filed by persons subject to the acts. A number of acts, such as The Health Insurance Act,³³⁸ The Private Sanitaria Act,³³⁹ The Cancer Act,³⁴⁰ and The Workmen's Compensation Act,³⁴¹

334 Examples only are listed here. A more complete listing can be found in Appendices C and D.

335 R.S.O. 1970, c. 401.

336 R.S.O. 1970, c. 475.

337 R.S.O. 1970, c. 71.

338 S.O. 1972, c. 91.

339 R.S.O. 1970, c. 363.

340 R.S.O. 1970, c. 55.

341 R.S.O. 1970, c. 505.

contain sections to preserve privacy respecting medical records. All of the taxing statutes contain secrecy provisions. At least 25 acts have general secrecy provisions declaring all information collected under those acts secret. At least 14 acts or regulations require oaths of secrecy to be sworn by those working with or for the government. All of the non-compellability provisions, which are discussed above in the section dealing with government's withholding information from the courts, restrict access to private or confidential information which is in the government's hands.

At least 34 provincial statutes have express provisions for excluding the public from hearings.³⁴² The Statutory Powers Procedures Act³⁴³ contains a general section giving a limited discretion to hold in camera hearings where private matters may be disclosed at the hearing. The hearing will be in camera where the desirability of avoiding disclosure of "intimate financial or personal matters" outweighs the desirability of adhering to the principle that hearings be open to the public.³⁴⁴

342 Examples include The Child Welfare Act, R.S.O. 1970, c. 217, s. 23; s. 46(1), (2); The Income Tax Act, R.S.O. 1970, c. 217, s. 23; and The Venereal Diseases Act, R.S.O. 1970, c. 479, s. 12(2).

343 S.O. 1971, c. 47.

344 Id., s. 9(1). In camera hearings in the administrative process are dealt with in L. Fox, op.cit., supra note 1, pp. 50-52.

b) Restricted Use Concept

These provisions are scattered throughout the statutes and have been inserted in an ad hoc fashion. Many of the existing sections were introduced as a result of the Inquiry into Civil Rights (see particularly Appendix B) and were intended to implement the principle that the use of government-held information should be restricted to the purpose for which the information was originally collected (discussed elsewhere in this report). The principle as stated in the McRuer Report was essentially confined to situations where information is gathered by the government pursuant to the exercise of inspection or investigation powers which were granted by statute.³⁴⁵

One might question whether it is necessary or desirable to restrict the operation of the principle to information collected under statutory powers of inquiry. The power of government agencies to coerce information from citizens does not depend on statutory authority alone. Indeed, it was acknowledged in interviews with senior civil servants that it would be impossible to gather all the information the government needs to function efficiently if threats of prosecution were the only method used to pry out the desired data. The power of government to get information frequently depends on the ability to promise

345 1 First Report of the Ontario Royal Commission of Inquiry into Civil Rights (the McRuer Report) (Toronto: Queen's Printer, 1969) at 458.

confidentiality or the ability to withhold something of benefit from a member of the public, and not on any statutory right to extract the desired information.³⁴⁶

An expansion of the "restricted use" principle might be seen to apply to all information which is provided to the government by people in the private sector. A presumption could be created that information collected for a particular purpose is to be used only for that purpose. In some cases, for example where information is required under The Corporations Information Act,³⁴⁷ one of the purposes for which the information is collected is to make the information available to the public. In other cases, such as the collection of information concerning

346 In the United States, the courts have recognized that government agencies must be able to promise confidentiality if certain kinds of information are to be collected. The Freedom of Information Act does not expressly refer to the problem, but the courts have decided that one of the tests to be applied in deciding whether information is exempt under the Act is this:

Would release of the information impair the ability of the government to collect such information in the future?
National Parks Association v. Morton 498 F. 2d 765 (1974).

This test was developed in the context of the commercial information exemption. Perhaps some general test of this type could be imported into a "privacy" exemption to information access in Ontario, as has been done in s. 32(1)(b) of the Australian Freedom of Information Bill (1978). It could be argued that if individuals knew the information given to government would be available to third parties, then the truthfulness, completeness and accuracy of information would decline. On the other hand, an exemption of the kind described might allay the individual's fears and avoid problems relating to the quality and quantity of information supplied.

347 S.O. 1976, c. 66, ss. 2-5.

the character, reputation, etc., of applicants for used car dealers' licences, it is clear that making the information public is not one of the purposes of collection. In the normal course of events, notification of uses for purposes other than the original purpose could be given to the supplier of information. The supplier's consent could be required before different uses were made of that particular information. Of course, provision would have to be made for instances in which it is in the greater public interest for the information at issue to be used over the objections of the original supplier.

It is certainly within the legislative competence of the Ontario legislature to pass legislation indicating general areas and types of cases where the objections of an information supplier may be overridden, or where consent for other particular uses would not be required. This type of approach can already be seen in some of the existing statutes of Ontario. In The Health Insurance Act,³⁴⁸ patients are deemed to have given their consent for the use of any information from their confidential medical files for the purpose of auditing doctors' accounts under the billing scheme or other purposes of the Plan, and information collected under the Act may be used in the administration of The Ambulance Act and the Criminal Code, among other things, without the consent of the person to whom the information relates.³⁴⁹

348 S.O. 1972, c. 91.

349 S.O. 1972, c. 91, ss. 33(2), 44.

The McRuer Report quotes, with apparent approval, the statement in Davis's Administrative Law Treatise, s. 313:

Furnishing information to an administrative agency is not the equivalent of disclosing that information to the public ...

350

Existing statutory secrecy sections provide a measure of protection from the divulging of private or confidential information to third parties or members of the public. This kind of protection against public disclosure of individual financial, medical or personal information could be incorporated into an information access act as an exemption to mandatory disclosure.

c) Unprotected Information

The enactment of an information access act with an exemption relating to privacy would not only supplant existing statutory protections of privacy, but would create legislated protection in areas where none exists at the moment.

Not all Ontario statutes have secrecy provisions. There is still a large body of information concerning individuals that has no legislated protection. For example, it is difficult to think of an area in which

more sensitive personal information is provided to government than in the administration of The Family Benefits Act.³⁵¹ The Act, however, contains no secrecy provision.

It might be that the best protection of individuals' privacy and confidentiality could be achieved by inserting more secrecy provisions in particular statutes. These provisions could be very specific in nature and relate to the particular documents and pieces of data that are involved in the administration of each statute. Sweden, for example, has adopted an approach that involves legislating very specific sections in the Secrecy Law. These sections are directed toward giving legal protection to information about individuals, including such things as "registries of punishment kept by the control agency concerning drunkenness" (s. 11); "notations in parish records" (s. 13); and documents "concerning legal assistance to individuals" (s. 26). Particular Swedish statutes also contain legal protections of information about individuals, e.g. the laws on social welfare registries (referred to in s. 14 of the Secrecy Law).

d) Enforcing Statutory Secrecy

Many existing statutory secrecy sections place a legal obligation upon the government and its employees to keep information about

351 R.S.O. 1970, c. 157.

individuals secret. However, the extent of an individual's ability to enforce those legal obligations is unclear. No reported cases could be found in which a civil servant was charged with the offence of breaking a secrecy provision in a provincial statute. No reported cases could be found in which an individual sued the government or a civil servant civilly for breach of a secrecy provision.

Some of the problems involved in suing the Ontario government for torts generally, and breaches of a statute specifically, will be examined in the following sections.

G. Problems in Enforcing
Existing Legal Protection

1. Suing the Crown in Ontario for Torts

... the procedural preconditions and statutory defenses which determine the scope of governmental liability are complex and scattered through a number of statutes, which in turn are superimposed upon a considerable body of common law, and it is a task of some magnitude to give a coherent account of the resulting legal structure.

352

352 Goldenberg, S.L., "Tort Actions Against the Crown in Ontario," [1973] Law Society of Upper Canada Special Lectures (Toronto: De Boo, 1970) 341 at 344-45.

In this section an attempt will be made to indicate the kinds of difficulties that arise when one tries to sue the government of Ontario, and the extent to which these legal technicalities and impediments frustrate citizens who wish to enforce what may at first appear to be their rights. The problems discussed here exist in addition to all the usual ones which are encountered in the course of normal litigation. They directly affect the extent to which practical protection of an individual's privacy is provided by lawsuits against the government. Detailed considerations of the problems raised in this section can be found in the 1973 Special Lectures of the Law Society of Upper Canada.³⁵³

The focus of this section will be on suing the government in tort. A tort is a civil wrong for which an action may be brought in court -- by the victim, against the wrongdoer. Not all wrongs are actionable. Only where the wrongdoer has breached a duty imposed upon him by law, or infringed some interest of the victim which is protected by law, will a tort exist. For example, the law imposes a duty on people to drive in a reasonable fashion. If a person drives negligently and injures someone else or their property, then a tort will have been committed. The negligent driver may be sued. The law imposes a number of duties on people, such as the duty to maintain confidences, the duty not to touch people or go on their property except with their

353 See Goldenberg, id., and Molot, H.L., "Tort Remedies Against Administrative Tribunals for Economic Loss," loc.cit., at 413 ff.

consent, and the duty not to defame others. Tort liability exists primarily to compensate the person injured by compelling the wrongdoer to pay for the damage he has done. The same act may give rise to tort liability and criminal liability. Striking someone in the face with a fist might lead to a criminal charge of assault and also give the victim the right to sue in tort for damages.

Tort law is distinguishable from contract law: in contract, the parties themselves determine and agree upon the duties owed to each other; in tort, it is the general law of the land that dictates the legal duties involved. One of the principles in tort law is vicarious liability. Vicarious liability arises in the master/servant or employer/employee relationship. The essence of the principle is that if an employee commits a tort in the course of his employment, then the employer will be held liable for any damages caused to the victim, even though the employer was not the actual wrongdoer. The victim may sue both the servant and the master.

As a practical matter, vicarious liability is very important. An employee or servant may have very little money. It is possible to garnishee the wages of an employee and take a percentage of his earnings each week, but if the court award is several thousand dollars, the collection process may take many years or turn out to be virtually impossible. Being allowed to sue the employer enables one to get a court award against a person or company that can pay it.

The general concepts of tort and vicarious liability have been introduced, to a certain degree, into the citizen/government relationship. At common law the Crown could not be sued for torts, nor was the Crown responsible for the torts of crown servants.³⁵⁴

The problems raised by the lack of direct or vicarious liability on the Crown's part were compounded by the fact that a civil servant's wages could not legally be garnisheed. Now, all tort liability of the Crown in Ontario is to be found in statutes. The Proceedings Against the Crown Act³⁵⁵ allows the Crown to be sued in certain instances, but other statutes also have provisions relating to the liability of civil servants and the Crown.

The Proceedings Against the Crown Act was introduced in the 1962-63 session of the Ontario legislature and described by Attorney General F.M. Cass, Q.C., as an Act that would "enable any person to sue the Crown and its servants and agents in the courts as of right and in the same manner that he may sue a person."³⁵⁶ In practice, however, as pointed out by S.L. Goldenberg, launching a suit against the Crown is akin to walking into a minefield. One might be suddenly and unexpectedly blown away. Take, for instance, the 1972 case of Collins v. Haliburton, Kawartha Pine Ridge District Health Unit

354 The Queen v. McFarlane, [1882] 7 S.C.R. 216.

355 R.S.O. 1970, c. 365.

356 Quoted in the McRuer Report, supra note 345, vol. 5, at 2201.

(No. 2),³⁵⁷ in which a trial had been held and the plaintiff Collins was awarded \$61,000 by the court. Before the judgment could be acted upon, the lawyers for the government defendant applied to change their original statement of defence to include a plea that: (a) The Public Authorities Protection Act³⁵⁸ required any plaintiff to commence his law suit against the Ontario government or its employees within six months of the action complained of; (b) more than six months elapsed before the plaintiff Collins sued the government; and (c) therefore the plaintiff should not have been allowed to sue the defendant government body at all.

The court allowed the new defence and nullified the effect of the trial and the \$61,000 judgment, leaving the plaintiff with nothing. It should be noted that The Limitations Act³⁵⁹ generally allows six years for the commencement of a lawsuit against a normal person rather than the six-month period allowed for suing the government by The Public Authorities Protection Act. This six-month limitation period "has been invoked repeatedly and with consistent success over the last few years."³⁶⁰ One of the difficulties with this six-month period is that it is unclear as to exactly who can and cannot take advantage of

357 [1972] 3 O.R. 643 (Ont. H.C.).

358 R.S.O. 1970, c. 374, s. 11.

359 R.S.O. 1970, c. 246.

360 Goldenberg, "Tort Actions Against the Crown," supra note 352, at 405.

it and thus avoid being sued. In one case a public school maintenance superintendent successfully avoided liability by its use.³⁶¹

Another unique time limit requirement, in addition to The Public Authorities Protection Act, is to be found in The Proceedings Against the Crown Act, s. 7. No lawsuit can be commenced against the Crown unless a detailed notice of the claim is given to the government at least 60 days before the action is started. This notice must be given within the six-month period referred to above. The result of failing to give the notice on time is clear: whether or not one has a reasonable excuse, if the time limits are missed, the right to sue is lost.

A very complex and difficult exercise is choosing one's defendant. The Proceedings Against the Crown Act says that a lawsuit shall be commenced against "Her Majesty the Queen in right of Ontario."³⁶² This is deceptively simple. The Crown is vicariously liable for torts committed by servants of the Crown only if the servant or agency has personal liability.³⁶³ Many acts specifically relieve civil servants of personal liability for actions made in the course of their

361 Goldenberg, *id.*, at 406, citing Moffat v. Dufferin Co. Bd. of Ed., [1973] 1 O.R. 351 (C.A.).

362 s. 13.

363 s. 5(2).

employment.³⁶⁴ Where such statute sections exist, the Crown cannot be sued.

If the tort committed by a civil servant was so outrageous as to be outside the scope of employment, then the statute sections limiting that civil servant's liability would generally not protect the wrongdoer. Unfortunately, if the tort can be seen as outside the scope of employment, then the Crown will not be vicariously liable for damage caused.

364 See The Ontario Municipal Board Act, R.S.O. 1970, c. 323, s. 32; The Development Corporations Act, 1973, S.O. 1973, c. 84, s. 23; The Elevators and Lifts Act, R.S.O., c. 143, s. 13; The Farm Products Marketing Act, R.S.O., c. 162, s. 4(6); The Hospital Services Commission Act, R.S.O. 1970, c. 209, s. 27(2); The Human Tissue Gift Act, 1971, S.O. 1971, c. 83, s. 9; The Milk Act, R.S.O. 1970, c. 273, s. 7(6); The Ontario Energy Board Act, R.S.O. 1970, c. 312, s. 6(2); The Radiological Technicians Act, R.S.O. 1970, c. 399, s. 3(3); and The Securities Act, R.S.O. 1970, c. 426, s. 145. (This list is not exhaustive.) Some recent acts declare that the civil servant will not be liable personally, but the Crown may be sued anyway: The Civil Rights Statute Law Amendment Act, 1971, S.O. 1971, c. 50 added this provision to four statutes. They are: The Gasoline Handling Act (s. 43(3)), The Pesticides Act (s. 66(4)), The Lakes and Rivers Improvement Act (s. 50(4)), and The Ontario Highway Transport Board Act (s. 62(3)). Since 1971, the provision has been incorporated into The Construction Safety Act, 1973, S.O. 1973, c. 47, s. 9; The Development Services Act, 1974, S.O. 1974, c. 2, s. 8; The Environmental Protection Amendment Act, 1974, S.O. 1974, c. 20, s. 27; The Industrial Safety Act, 1971, S.O. 1971, c. 43, s. 16; The Ministry of Energy Act, 1973, S.O. 1973, c. 56, s. 5(3); The Ministry of Community and Social Services Amendment Act, 1974, S.O. 1974, c. 95, s. 2; The Ontario Water Resources Amendment Act, S.O. 1974, c. 19, s. 30; The Petroleum Resources Act, 1971, S.O. 1971, c. 94, s. 6; and The Workmen's Compensation Amendment Act No. 2, S.O. 1973, c. 173, s. 8(4). (Again, this list is not exhaustive.)

If the tort can be established as having been committed by an agency or Crown corporation which may be sued in its own name, then that body must be sued directly. The Crown will not accept any liability for such torts.³⁶⁵ In order to sue such an entity, several problems must be overcome. One of the most difficult is to establish that no civil servant is personally liable for the tort and that the agency or corporation itself has committed the wrong. The difficulty lies in the notion that statutory bodies are themselves servants of the Crown. A servant cannot be vicariously liable for another servant's torts; only the master is subject to vicarious liability. In the case of a statutory body such as the Ontario Securities Commission, an employee of the Commission and the Commission itself would both be servants of the Crown for purposes of any vicarious liability analysis. If an employee of the Ontario Securities Commission committed a tort, one would find that the Crown is not vicariously liable because the civil servant is not liable (by operation of s. 145 of the Securities Act³⁶⁶ and s. 5(2) of The Proceedings Against the Crown Act). One would also discover that the Securities Commission is probably not vicariously liable because of its status as a servant of the Crown. If one attempted to establish that the Ontario Securities Commission itself had committed the tort and therefore could be sued, then reference

365 The Proceedings Against the Crown Act, R.S.O. 1970, c. 365, s. 2(2)(b).

366 R.S.O. 1970, c. 426.

would be made to Westlake v. The Queen,³⁶⁷ where it was held that the Ontario Securities Commission, an independent quasi-judicial regulatory body with status to appear in court in the course of its work, could not be brought into court as a defendant in an action for damages. One of Goldenberg's mines has been stepped on. There is no one who can be sued.

Even if one succeeded in getting an action before the courts, the Crown has certain powers not granted to ordinary defendants. The Crown may refuse to produce documents or answer questions in examination for discovery.³⁶⁸ If the Crown holds information vital to the proof of the tort victim's case, this could be quite an advantage. The Crown can also refuse to give evidence at trial by claiming Crown privilege.³⁶⁹

The remedies available against the Crown are somewhat different from those available against normal defendants, as well. The Crown is not bound to obey injunction orders issued by the courts. In cases where injunction is the appropriate remedy, the court can only render a declaratory judgment; that is, a judgment that states the rights of

362 [1971] 3 O.R. 533, affirmed, [1972] 2 O.R. 605 (investors attempted to sue the Ontario Securities Commission for losses suffered in the collapse of the Prudential Finance Corporation in 1966).

368 The Proceedings Against the Crown Act, R.S.O. 1970, c. 365, s. 12.

369 See Ch. II, Part E, "Withholding of Government Information from Court Proceedings," supra.

the parties to the lawsuit.³⁷⁰ Normally, of course, such a judgment will be followed by the Crown. If a judgment for the payment of damages is made against the Crown, the Treasurer of Ontario is required to pay the award.³⁷¹

If the tort victim has found it necessary to sue a statutory body (and some are declared suable by the specific acts creating them), then another small difficulty might arise. If the body has no property of its own, but merely uses office space and furniture provided by the government, then it may be impossible to legally enforce a judgment for the payment of monetary damages. The normal procedure of execution (the seizing of assets to satisfy a court judgement) could not be followed since assets belonging to the government or Crown cannot be seized. The Treasurer of Ontario would have no obligation to pay the judgment amount, since it was not awarded in a court action under The Proceedings Against the Crown Act.

The purpose of this section has been merely to demonstrate the kinds of difficulties one might face in suing the government of Ontario and the problems one might encounter in attempting to use a lawsuit as a means of protecting one's privacy against information-related assaults by government. It should be remembered that in the foregoing

370 The Proceedings Against the Crown Act, R.S.O. 1970, c. 365, s. 18(1).

371 Id., s. 26.

description of legal technicalities and impediments, the merits of particular claims against the government played no part.

2. Suing the Government for Breach
of a Statutory Secrecy Provision

Interesting questions arise concerning the relationship of statutory secrecy and civil lawsuits in tort. A large number of factors would have to be taken into consideration if one wished to sue the Ontario government for the release of information in breach of a statutory secrecy provision. It has already been suggested that confidentiality sections in various acts are the most direct protection of privacy or confidentiality to be found in Ontario's law. For example, assume this fact situation: Civil servant [A] is employed in the administration of one of Ontario's many statutes. [A] releases to a member of the general public some information about citizen [X]. The act in question declares that the information should have been kept secret. [X] wishes to sue. The following issues arise:

- . Is there a legal basis for a lawsuit?
- . Can the procedural requirements be met?
- . Who or what bodies can be named as defendants?
- . Is there an appropriate remedy available?
- . Will a judgment be enforceable?

What was the state of mind of the civil servant who released the information? If the breach of the statute was inadvertent, and the civil servant merely thought he was doing his job, then it is possible that no basis for a lawsuit can be established. The statute involved may grant immunity to the civil servant. As previously noted, the Crown would also be immune from liability in such a case (unless the act specifically gave the civil servant immunity but retained liability for the Crown). Many acts provide that normally secret information may be released in the administration of the act. If a subjective test were used by the court (i.e., did the civil servant think that it was his job to release the information?) then the fact that it was not his job would become irrelevant and no liability would attach for the inadvertent breach of the act. If the civil servant was negligent or reckless in releasing the information, the statutory immunity may still be invoked to protect him and the Crown from being sued. If liability can be established, then actions for breach of confidence or wilful act causing harm become possibilities.

If the breach of the statute was intentional, but the information was released "in the public interest," it will be difficult to sue successfully. If the breach was intentional and the civil servant's motives were personal, such as monetary gain or spite, then liability of the civil servant will be reasonably clear; statutory immunity will probably not protect him. However, in cases such as these, the actions will more than likely be seen as outside the scope of the civil servant's employment, and the Crown will escape liability.

The state of mind of the aggrieved citizen could have a bearing on the success of a lawsuit. Did the citizen have an expectation that the information at issue would be kept confidential at the time when the information was provided? Was the citizen aware of the statutory secrecy provision? In situations such as this, where the common law has not already established that an action for breach of confidence will lie, it will be necessary to establish that the relationship was a confidential one, notwithstanding the secrecy section in the act. Whether or not the aggrieved party had expectations of confidentiality and whether there was reliance on the expectation become important factors.³⁷²

The type of damages suffered by the citizen will be important. Was there monetary loss? Was mere emotional discomfort the only damage? Was the citizen so upset that he became physically ill, e.g. develop an ulcer or suffer a nervous breakdown? The type of damage suffered will, of course, affect the extent of damages that might be awarded by a court. Are the damages worth suing for? First, the suit may be expensive, and if the action is seen to be trivial, vexatious or frivolous, it is quite conceivable that even a successful plaintiff will be saddled with a heavy burden of costs. If the release of information was done in such a way that exemplary damages may be awarded, then the actual damages of the citizen may not be so important.

372 Cleveland Cliffs Steamship Co. v. The Queen, [1957] S.C.R. 810, 10 D.L.R. (2d) 673.

The courts are not enthusiastic about awarding exemplary damages, however, and this should make a potential plaintiff wary.

The exact language of the particular secrecy provision involved must be looked at to determine what kind of duty was imposed on the civil servant. If the section requires secrecy for the benefit of the submitter of information, it may be said that a duty has been imposed in favour of the aggrieved citizen, and that breach of that duty would give rise to a lawsuit. Most of the statutes of Ontario, however, are couched in language which appears to create a duty to the Crown, not a duty to the submitter of information.³⁷³ This could present difficulties, since in most cases it is necessary to establish a duty owed to the complaining party before that party can succeed in a lawsuit.

The nature of the secrecy section is important as well. If there is a penalty provided for breach of the section, then the purpose of the penalty must be looked to.³⁷⁴ A large penalty may indicate one of two things. The penalty may be severe in order to indicate the seriousness of the offence, from which it can be deduced that it is appropriate that a person wronged by the commission of that offence is entitled to sue civilly and be compensated. On the other hand, a

373 The King v. Anthony, [1946] S.C.R. 569, [1946] 3 D.L.R. 577.

374 See generally Linden, A., Canadian Negligence Law (Toronto: Butterworths, 1972) at 82 ff.

large penalty may be taken to indicate the legislature's intent that the penalty should be the only legal liability of the wrongdoer and that it was intended to do away with civil liability for the same action.

A small penalty may indicate opposite intentions as well. Civil liability might be intended to operate in conjunction with the statutory liability, with the small penalty being inserted to indicate that the primary liability for such actions is to be civil. On the other hand, a small penalty might indicate the trivial nature of the particular type of wrongdoing, and from this it can be deduced that the legislature did not intend to create a civil cause of action when it placed certain obligations upon civil servants.

Some statutes contain general offence sections which declare that breach of any section of the act or regulations is an offence punishable on summary conviction. Other statutes provide for specific offences, punishable on summary conviction, for breach of the secrecy sections. The effect of the general, as opposed to specific, offences on civil liability is a problem much like the effect of large or small penalties.

The technical and procedural impediments concerning time limits, remedies, enforcement, direct and vicarious liability, and proper defendants, pointed out in the previous section, will all come into play as well.

The statutory secrecy provisions may be the most direct protection of privacy interests to be found in Ontario's law, at least as far as government is concerned; but as with general tort law, the extent of practical and legally enforceable protection provided for privacy or confidentiality is not clear.

3. The Tort of Invasion of Privacy

a) Present Status in Ontario

Some Canadian jurisdictions have enacted a statute to create a tort of invasion of privacy. The tort of invasion of privacy is well established in the United States, both in the common law and in statutes. Another research publication³⁷⁵ examines these legal developments in some detail.

In Ontario there is no tort of invasion of privacy. There have been some indications that such a tort may be in the formative stages and on its way toward being recognized by Ontario courts. No case has been decided that explicitly recognizes and gives legal effect to this tort. However, some comments have been made by judges that indicate

375 M. Brown et al., op.cit., supra note 137.

that an action based on invasion of privacy might receive favourable treatment. In Krouse v. Chrysler Canada Ltd.,³⁷⁶ Parker J. said in the course of a judgment on a pre-trial motion to dismiss the case,

It may be that the action is novel, but it has not been shown to me that the court in this jurisdiction would not recognize a right of privacy. 377

An Alberta case was decided on "nuisance" principles, but some interesting language was used in discussing the relationship of nuisance to privacy, and a willingness to entertain possible actions for invasion of privacy was indicated.³⁷⁸

Unreasonable interference with an occupier's enjoyment of property will give rise to an action in nuisance. Burns³⁷⁹ and the Younger Report³⁸⁰ indicate that a severe limitation on the use of nuisance

376 (1970), 12 D.L.R. (3d) 463 at 464. This case and others dealing with the tort of appropriation of personality are not particularly important in the citizen/government context. It would seem to be extremely rare that a civil servant in the course of his employment would pass himself off as someone else for commercial gain, or appropriate some facet of a person's personality for the financial betterment of the Ontario government. The judicial attitude toward the protection of privacy is of general interest, however.

377 This passage has recently been quoted with approval by O'Driscoll J. in Burnett v. The Queen et al. (1978), 23 O.R. (2d) 109 at 115 (H.C.) in the course of refusing to strike out a claim brought against the CBC for damages for invasion of privacy.

378 Motherwell v. Motherwell (1976), 73 D.L.R. (3d) 62 (Alta. C.A.).

379 Burns, Privacy and the Law, supra note 224, at 17.

380 The Younger Report, supra note 222, at 26.

to protect privacy is the requirement that there be physical effects on the plaintiff's property. It would appear, however, that in Canada it may not be necessary to prove physical effects on property. In Motherwell v. Motherwell³⁸¹ Clement J.A., speaking for the Alberta Court of Appeal, cites with approval authority to the effect that the proposition "that nothing can constitute a private nuisance in law unless it effects the reasonable enjoyment of other premises in a physical way ... is unsound."³⁸²

Nuisance must still affect the use of property, however, so to that extent the remedy is still tied to property concepts. The old difficulty of "standing" remains, i.e., whether a person whose use of property has been interfered with is an "occupier" at law. Only the occupier may sue in nuisance.

Clement J.A. speaks of the "invasion of privacy by abuse of the telephone system"³⁸³ as a new category of the law of nuisance, but what Clement means by the phrase "invasion of privacy" is unclear. He specifically states that he uses the phrase as "distinct from such matters as surveillance, the clandestine gathering and use of personal information by various means, the interception of private communications

381 Supra note 378.

382 Id., at 74, quoting Lord Romer in Thompson-Schwab v. Costaki, [1956] 1 All E.R. 652, at 656.

383 Id., at 74.

and unwanted publicity, discussed by Peter Burns in 'The Law of Privacy: The Canadian Experience'."³⁸⁴ In other words, Clement was not referring to any of the traditional concepts of privacy but was restricting his use of the term to the specific acts of harassing telephone calls affecting the use of property.³⁸⁵

The case adds little to the existing law in the area, but is notable as another indication of a new receptiveness to the expansion of the Canadian common law in the privacy field. Clement J.A. quoted with approval statements relating to other areas of the law (contracts, negligence, restitution) to the effect that public policy considerations "going beyond the discipline of stare decisis ... arising from adequately demonstrated social need of a continuing nature, may lead, where necessary to maintain social justice, to a new category of the review of a principle (of law),"³⁸⁶ or as Clement quotes from Lord Simonds: "It is no doubt essential to the life of the common law that its principles should be adapted to meet fresh circumstances and needs."³⁸⁷

384 Id., at 67.

385 Such acts are already dealt with by the Criminal Code, R.S.C. 1970, c. C-34, s. 330(3).

386 Motherwell v. Motherwell, supra note 378, at 69-70.

387 Id., at 69, quoting Lord Simonds in British Movietonews Ltd. v. London & District Cinemas Ltd., [1952] A.C. 166, at 168, [1951] 2 All E.R. 617 (H.L.).

b) Monetary Awards in Tort Law

One positive aspect of the use of a tort remedy to protect privacy is the possibility of the victim being awarded high damages as a result of his privacy being invaded. Generally, when a plaintiff succeeds in a lawsuit the court will order the defendant to pay the plaintiff such an amount of money as will cover any actual monetary loss the plaintiff proved, or such amount as will justly compensate the plaintiff for the wrong he has suffered. The court has a discretion, however, to award "exemplary" damages to discourage the type of activity the defendant had engaged in and to encourage respect for the law. This is a form of penalty rather than a compensation device.

In England, since 1964 the discretion of the court to award exemplary damages has been limited to three types of cases:

- 1) where there has been oppressive, arbitrary or unconstitutional action by the servants of the government;
- 2) where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff; and
- 3) where such damages are expressly authorized by statute.³⁸⁸

388 Rookes v. Barnard [1964] A.C. 1129, [1964] 1 All E.R. 367 (H.L.), per Lord Devlin, at 1226-27 (A.C.), 410-11 (All E.R.); affirmed, Cassell & Co. v. Broome [1972] A.C. 1027, [1972] 1 All E.R. 801.

Prior to the 1964 decision in Rookes v. Barnard, exemplary damages could be awarded in any case where the defendant's conduct could be characterized as "high handed," "insolent," "vindictive," "malicious," "showing a contempt of the plaintiff's right," or "disregarding every principle which actuates the conduct of gentlemen."³⁸⁹

Australia has chosen not to follow the limitations which have been imposed in England,³⁹⁰ but in Canada, some provinces have accepted the Rookes v. Barnard limitations. Ontario, however, has rejected them.³⁹¹ The position is not completely established, however, since the Supreme Court of Canada has yet to rule on the particular issue of exemplary damages. The weight of authority at this point seems to be in favour of a wide scope of discretion for the awarding of exemplary damages.

In any lawsuit against the Ontario government, it would appear that exemplary damages might be awarded. At the very least, where the

389 See 2 Halsbury's Laws of England (3d ed.), para. 391, "Damages," at 225.

390 Australian Consolidated Press Ltd. v. Uren, [1969] 1 A.C. 590 (P.C.).

391 See Catzman, M.A., "Exemplary Damages: The Decline, Fall and Resurrection of Rookes v. Barnard," [1973] Law Society of Upper Canada Special Lectures (Toronto: De Boo, 1973) at 51. Burns, Privacy and the Law, supra note 224 at 15, and Rowan, Privacy and the Law, supra note 228 at 267; both cite the Ontario case of McElroy v. Cowper-Smith and Woodman [1967] S.C.R. 425, 62 D.L.R. (2d) 65, as authority for this proposition.

actions complained of are "oppressive, arbitrary or unconstitutional," exemplary damages are a real possibility.

c) Practical Limitations of a
Tort of Invasion of Privacy

One might question the value of a tort of invasion of privacy as a mechanism to protect the citizen from information-related assaults on his privacy, vis-a-vis government. One of the inherent difficulties in using a court action to protect privacy lies in the fact that court actions are usually carried on in public. It seems that one would have to further compromise one's privacy in attempting to redress the original invasion.

A second difficulty is the enormity of bringing any tort action against the government in Ontario. Some of the problems involved are discussed briefly in the section supra, "Suing the Crown in Ontario." Given the state of the law in the area of suing the government, it could be argued that a tort of invasion of privacy would give no real protection to individuals.³⁹²

392 Various optional mechanisms for the protection of privacy in the citizen/government relationship are dealt with in M. Brown et al., op.cit., supra note 137.

CHAPTER V

CONCLUSIONS

A. General Conclusions

The state of existing law in Ontario relative to secrecy of government information, access to government information and individual privacy protections from disclosure of government information can be described very briefly.

The government of Ontario has extensive legal rights to withhold information from members of the public, while the public has extremely limited rights of access to government information. The legal rights which do exist are severely restricted by the difficulty in enforcing those rights through the courts. This is largely a result of the uncertainty and complexity of the law relating to mandamus.

An individual seeking the protection of the law in relation to public disclosure of government information about himself will find little practical protection in either the statute or common law of the province. Again, the uncertainty and complexity of the law involved in suing the government results in a severe limitation on the practical

effectiveness of those areas of the law which might offer some privacy protection in this context.

A summary of more particular findings in some of the areas researched follows.

B. Summary of Major Findings

1. Secrecy of Government Information

1) No general secrecy legislation exists in Ontario. The law regarding secrecy of, and access to, government information has not developed in any systematic or comprehensive manner. [II.A]

2) As a general rule, if the Ontario government wishes to keep information secret, there is no law which can be used to force disclosure of the desired information. The government is in the legal position of being able to keep almost all of its information secret. [II.A]

3) Every Ontario civil servant is required by law to take an oath of secrecy before he may receive a paycheque. [II.B]

4) Breach of the oath of secrecy is not, per se, an offence for which one can be prosecuted. However, administrative sanctions such as demotion or dismissal may apparently be imposed. [II.B]

5) Oaths of secrecy in Ontario are couched in such general language that a literal interpretation would impede effective administration and prevent civil servants from communicating with the public or with each other. [II.B]

6) Vast amounts of government information are declared secret by approximately 124 Ontario statutes. These secrecy provisions were apparently inserted in an ad hoc fashion, and many are phrased in a standard format with no tailoring to the context of the particular act in which they appear. [II.C]

7) Many of the statutory secrecy sections were apparently developed as a result of the Inquiry into Civil Rights in Ontario (McRuer Report). While the protection of individual civil rights is an important end, the legislation used to achieve this protection has resulted in the enactment of serious impediments for access to a great deal of government information. Arguably, much of the information declared secret by statute could be released without infringing on civil rights. [II.C]

8) The Cabinet may order secrecy by passing regulations which contain secrecy provisions. [II.C.5]

9) The question of how to deal with existing statutory secrecy sections in the context of a freedom of information scheme has been addressed by a number of jurisdictions. The approaches which have been adopted or recommended by Australia, Canada, New Brunswick, Nova Scotia, Sweden or the United States would produce little change in the existing Ontario legal framework of statutory secrecy. [II.D]

10) The Ontario government may claim Crown privilege to withhold information from the courts, on the ground that it is in the public interest for the information to be withheld. This is a right which developed at common law. The government may exercise this right in relation to any court proceedings. [II.E]

11) In Ontario any claim for Crown privilege will apparently be reviewable by a judge. In camera inspection of the documents in question may be ordered by a judge to determine if the public interest, cited as the basis for the claim of privilege, overrides the public interest in the administration of justice (in the context of the particular case) that would require public disclosure of the documents in court. [II.E.2]

12) At least 39 Ontario statutes allow civil servants to refuse to testify in court, even if subpoenaed. This decision to refuse information to the courts is not reviewable by a judge. Such statutory provisions usually apply only to civil proceedings to which the Crown (or government) is not a party. [II.E.3]

13) There is essentially no right of discovery against the Crown in prosecutions under the Criminal Code of Canada or provincial statutes.

[II.E.4]

14) There is no formal legal basis for the classification of government documents in Ontario. Designations such as "confidential" and "restricted" are made at the discretion of the minister or of ministry officials. [II.F]

15) There is no legal right of access to administrative manuals and similar documents which contain criteria for decision-making and may affect the rights of those people dealing with the government. [II.F]

2. Access to Government Information

16) There is no general right of access to government-held information. [III.A]

17) Approximately 75 statutes of Ontario require the government to make some information public (apart from notices that must be given to individuals or businesses in the course of government regulation of certain activities). [III.B]

18) The language of statute sections requiring information to be made public is very specific. Relatively little information is declared to be available to the public. [III.B.1]

19) Most of the information required to be made public is information relating to the affairs of private sector entities or municipalities, and not relating to the affairs of the provincial government itself. [III.B.1]

20) Forcing government's compliance with mandatory disclosure as dictated by statute requires a court order of mandamus. Some difficulties arise in applications for mandamus. The chief difficulties are that mandamus will not be ordered unless a duty has been imposed by statute on a servant of the Crown, and that "standing" or a special interest must be demonstrated before a person may apply successfully for an order. [III.B.2]

21) Members of the provincial Legislative Assembly have no greater rights of access to government-held information than any other person in Ontario. [III.C.1]

22) The Assembly itself has broad legal powers to compel government to disclose information, but the political nature of the Assembly makes this an information access mechanism which is uncertain at best. [III.C.2]

23) Members of the press have no greater rights of access to government-held information than any other person in Ontario. [III.E]

24) The Ombudsman's legal power to gain access to government information is subject to significant limitations. [III.F.1]

25) The Ombudsman's legal right to share government-held information with members of the public who lodge complaints is very limited.
[III.F.2]

3. Individual Privacy and
Disclosure of Government Information

26) There is no legal definition of privacy in Ontario. Privacy per se does not receive legal protection in Ontario. [IV.C.1]

27) As far as the protection of individuals' privacy in relation to provincial governmental activities is concerned, the Ontario legislature has virtually unlimited authority to pass laws infringing upon or protecting privacy. [IV.C.1]

28) In other jurisdictions where privacy is given some status in law, governments enjoy a special position and are treated differently than other "privacy invaders." [IV.C.3]

29) Very little of the existing literature on privacy and the law deals with the privacy problems raised when government discloses true information about individuals. Rather, the literature deals with non-government activity, commercial aspects of privacy and problems arising from the promulgation of false information about people. [IV.D]

30) Most aspects of the law that have been associated with privacy in the private sector relationships have little or no relevance to the privacy protection issues raised in the context of disclosure of true information which is already held in government files. The aspects of Ontario law usually associated with privacy include those dealing with: the invasion of territorial or proprietary privacy -- trespass to land and related Criminal Code offences, nuisance, and trespass to chattels; the interception or divulging of private communications -- Criminal Code wiretapping offences, offences under the Post Office Act or The Telephone Act, and evidentiary privilege; publicity placing a person in a false light -- defamation, injurious falsehood, and related Criminal Code offences; and appropriation of personality -- passing off, and appropriation of name or likeness. [IV.E]

31) If the government were to make public true information about a person, then a possibility exists that an action for "wilful act causing harm and mental suffering" might be brought by the individual. This would, however, be a novel use of the action and there are no decided cases indicating that such an action would be successful. [IV.F.1]

32) An action for breach of contract might be launched against the Ontario government for public disclosure of confidential information obtained as a result of the contractual relationship. Such an action may be maintained even if no express term of the contract addressed the confidentiality issue. [IV.F.2]

33) As in private sector relationships, the breach of confidence action is potentially a protection against disclosure of information by government. However, no reported cases of this kind were found in the course of the research. [IV.F.3]

34) The effectiveness of a breach of confidence action against the government is uncertain. First, the action has developed primarily in the context of commercial confidences rather than matters of individual privacy. Second, the extent to which the Ontario government might be able to take advantage of the established defence of "public interest" is unclear. Third, the enormous procedural complexities involved in the task of suing the Ontario government in tort is in itself a major obstacle to the successful use of a breach of confidence action as a remedy for the release by government of information about an individual. [IV.F.3 and IV.G.1]

35) The common law appears to provide very little in the way of protection from the disclosure of information about individuals by the Ontario government. [IV.F.3]

36) Statutory secrecy provisions present the closest approximation to direct protection of individual privacy interests that the law of Ontario affords. [IV.F]

37) Existing statutory sections do not provide a comprehensive privacy protection scheme. The sections leave a great deal of discretion in the hands of government officials as to whether to make information public. As well, not all Ontario statutes have secrecy provisions; consequently, a large body of government-held information about individuals is under no statutory protection. [IV.F.4(c)]

38) The effectiveness of statutory secrecy as a privacy protection device is limited by the difficulties an individual might encounter in attempting to enforce the secrecy provisions in court. [IV.F.4(d) and IV.G.2]

39) The statute law of the province appears to provide the individual with little in the way of effective legal protection against release of information by the Ontario government. [IV.F.4 and IV.G.2]

40) Invasion of privacy has not yet been clearly recognized as a tort in the law of Ontario. [IV.G.3]

APPENDIX A

STATUTORY PROVISIONS RESPECTING NON-DISCLOSURE OF GOVERNMENT INFORMATION: ONTARIO

- as contained in -

Public Statutes of the Province of Ontario consolidated in the Revised Statutes of Ontario, 1970, and those statutes passed to the end of the Second Session of the Thirty-First Legislature of Ontario, as amended up to, and including, the week ending September 4, 1979. Some recent amendments, etc. are to be found at page 312 ff.

Introduction

This appendix contains the following:

- a) statutory prohibitions against the disclosure of information by government officials;
- b) statutory exceptions to, and limitations on, the above prohibitions;
- c) sections which specifically provide for a penalty for violation of the above prohibitions. Where no such specific penalty exists, the statute's general penalty section has been noted if applicable;
- d) statutory sections restricting the compellability or competence of government officials respecting judicial or administrative proceedings;
- e) statutory sections which concern the taking of an oath where the oath is specified as one of secrecy;
- f) statutory sections conferring a discretion on government officials to disclose information, or disseminate or publish information whose availability to the public may be restricted; and
- g) statutory sections which confer a power to make regulations expressly respecting non-disclosure of government information, non-compellability of government officials or oaths of secrecy respecting government officials.

In addition, a number of sections have been included which do not expressly, but may effectively, limit disclosure of government information.

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AMBULANCE ACT R.S.O. 1970, Chap. 20, s. 18(3) as enacted by 1971, Vol. 2,
c. 50, s. 5(10)

18. (3) Each person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under this section shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

General offence section: s. 23(1)

ASSESSMENT ACT R.S.O. 1970, Chap. 32, ss. 78, 79

78. (1) Every assessment commissioner or assessor or any person in the employ of a municipality who in the course of his duties acquires or has access to information furnished by any person under section 13 or 14 that relates in any way to the determination of the value of any real property or the amount of assessment thereof or to the determination of the amount of any business assessment, and who wilfully discloses or permits to be disclosed any such information not required to be entered on the assessment roll to any other person not likewise entitled in the course of his duties to acquire or have access to the information, is guilty of an offence and on summary conviction is liable to a fine of not more than \$200, or to imprisonment for a term of not more than six months, or to both.

(2) This section does not prevent disclosure of such information by any person when being examined as a witness in an assessment appeal or in an action or other proceeding in a court or in an arbitration. 1968-69, c. 6, s. 78.

79. In addition to the penalties and punishments provided for by this Act for a contravention of the provisions thereof, the person guilty of such contravention is liable to every person who is thereby injured for the damages sustained by such person by reason of such contravention. 1968-69, c. 6, s. 79.

BAILIFFS ACT R.S.O. 1970, Chap. 38, s. 14a as enacted by 1971, Vol. 2, c. 50, s. 10(11)

14a. Every person employed in the administration of this Act, including any person making an examination under section 11, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment or examination and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

General offence section: s. 15(1)

BUILDING CODE ACT , 1974 S.O. 1974, Chap. 74, s. 22

22. (1) A chief official, inspector, person who, at the request of an inspector, accompanies an inspector, or person who, at the request of an inspector, makes an examination, test, or inquiry or takes samples shall not publish, disclose or communicate to any person any information, material, statement or result of any test, acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his duties under this Act or the regulations.

(2) No report of a chief official, inspector, person who, at the request of an inspector, accompanies an inspector, or person who, at the request of an inspector, makes an examination, test or inquiry or takes samples shall be communicated, disclosed or published to any person except for the purposes of carrying out his duties under this Act or the regulations.

(3) No chief official, inspector, person who, at the request of an inspector, accompanies an inspector or person who makes an examination, test or inquiry or takes samples at the request of an inspector is a compellable witness in a civil suit or proceeding respecting any information, material, statement or test acquired, furnished, obtained, made or received under the powers conferred under this Act.

(4) The Director may communicate or allow to be communicated, disclosed or published information, material or statements or the result of a test acquired, furnished, obtained, made or received under the powers conferred by this Act and the regulations.

(5) No person to whom information is communicated under this section or section 10 or 19 shall divulge the name of the informant to any person except for the purposes of this Act.

General offence section: s. 23(1) (b) (c)

BUSINESS PRACTICES ACT, 1974 S.O. 1974, Chap. 131, s. 14

14. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 10 or 11 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel or to the court in any proceeding under this Act or the regulations;
- (c) to inform the consumer involved of an unfair practice and of any information relevant to the consumer's rights under this Act; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

CANCER ACT R.S.O. 1970, Ch. 55, s. 6a(1) as enacted by 1972, c. 34, s.1

6a. (1) Any information or report respecting a case of cancer furnished to the Foundation by any person shall be kept confidential and shall not be used or disclosed by the Foundation to any person for any purpose other than for compiling statistics or carrying out medical or epidemiological research.

CANCER REMEDIES ACT R.S.O. 1970, Chap. 56, ss. 5, 7.

5. (1) The Commission may require any person who advertises, offers for sale, holds out, distributes, sells or administers either free of charge or for gain, hire or hope of reward, any substance or method of treatment as a remedy for cancer to submit samples of such substance or a description of

such treatment and samples of any substance used with such treatment to the Commission together with the formula of such substance and such other information pertaining to such substance or method of treatment as the Commission may determine.

(2) The Commission shall not divulge any information relating to the composition or formula of any substance received by it, except to a person authorized by it to investigate the substance.

(3) The Commission may administer an oath in such form and manner as it may determine, binding any such person not to divulge information furnished to him. R.S.O. 1960, c. 46, s. 5.

7. The Commission shall make a report of any determination or finding relating to a substance or method of treatment,

- (a) to the Minister; and
- (b) to the person who submitted the substance or method to the Commission for investigation,

and the Minister may publish the report in such manner as he considers proper. R.S.O. 1960, c. 46, s. 7.

General offence section: s. 9

CHILD WELFARE ACT R.S.O. 1970, Chap. 64, ss. 46(3) [Part II], 79, 80[Part IV]

46. (3) Where a hearing is held under this Part, whether upon an application or by way of a trial or appeal, no person shall publish the name of the child or his parent concerned in the hearing by newspaper or other publication or by broadcast or any other means, except with the leave of the person holding the hearing. 1965, c. 14, s. 46(2,3)

79. If the adopted child was born out of wedlock, that fact shall not appear upon the adoption order. 1965, c. 14, s. 78.

80. (1) The papers used upon an application for an adoption order shall be sealed up and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of the Director. 1965, c. 14, s. 79.

COLLECTION AGENCIES ACT R.S.O. 1970, Chap. 71, ss. 26b [as re-enacted by 1971, Vol. 2, c. 50, s. 21(4)], 30(3)(4)

26b. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 23, 24, 25, 26 or 26a shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

30. (3) Every collection agency shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the proprietor or officer of the collection agency and certified by a person licensed under The Public Accountancy Act.

(4) The information contained in a financial statement filed under subsection 3 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 11, s. 30.(3,4)

General offence section: 37(1)(b)(c)

COLLEGES COLLECTIVE BARGAINING ACT, 1975 S.O. 1975, Chap. 74, ss. 22 [Part III], 58 [Part VII], 78(6) [Part IX], 93 [Part X]

22. (1) If the parties make or renew, as the case may be, an agreement within fifteen days after the Commission has given a copy of the report to each of the parties, the report shall not be made public by the Commission, either of the parties or by any person.

(2) If the parties do not make an agreement, or renew the agreement, as the case may be, within the period of time specified in subsection 1, the Commission shall make public the report of the fact finder.

(3) Notwithstanding subsections 1 and 2, where both parties agree and the Commission approves, the Commission may defer making public the report of the fact finder for an additional period of not more than five days.

58. No member of, or person employed or engaged by, the Commission shall be required to give testimony in any proceeding under this Act or before a court or tribunal with regard to information obtained by him in the discharge of his duties as a member of or person employed or engaged by the Commission.

78. (6) The records of an employee organization relating to membership or any records that may disclose whether a person is or is not a member of an employee organization or does or does not desire to be represented by an employee organization produced in a proceeding before the Ontario Labour Relations Board is for the exclusive use of the Ontario Labour Relations Board and its officers and shall not, except with the consent of the Ontario Labour Relations Board, be disclosed and no person shall, except with the consent of the Ontario Labour Relations Board be compelled to disclose whether a person is or is not a member of an employee organization or does or does not desire to be represented by an employee organization.

93. Notwithstanding any other provision of this Act,

- (a) the Minister of Colleges and Universities;
- (b) the Deputy Minister of Colleges and Universities;
- (c) a person employed in a position confidential to the Minister of Colleges and Universities or the Deputy Minister of Colleges and Universities;
- (d) the chairman, a vice-chairman or a member or employee of the Ontario Labour Relations Board;
- (e) an arbitrator or member or chairman of a board of arbitration; or
- (f) a selector,

is not a compellable witness in any proceeding under this Act or before a court or tribunal.

General offence section: s. 90(1)(3)

COMPENSATION FOR VICTIMS OF CRIME ACT, 1971 S.O. 1971, Vol. 2, Chap. 51, s. 13

13. (1) The Board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at a hearing where the Board considers it necessary but in making an order under this subsection the Board shall have regard to the desirability of permitting the public to be informed of the principles and nature of each case.

(2) Any person who publishes a report or account of any evidence at a hearing contrary to an order of the Board under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(3) Where a corporation is convicted of an offence under subsection 2, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

CONSTRUCTION SAFETY ACT, 1973 S.O. 1973, Chap. 47, s. 8

8. (1) An inspector, a person who accompanies an inspector, or a person who makes an examination, test, or inquiry, or takes samples shall not publish, disclose or communicate to any person any information, material, statement or result of any test, acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his duties under this Act or the regulations.

(2) No report of an inspector, a person who, at the request of an inspector, accompanies an inspector, or a person who, at the request of an inspector, makes an examination, test, inquiry or takes samples shall be communicated, disclosed or published to any person except for the purposes of carrying out his duties under this Act or the regulations.

(3) Neither an inspector nor a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is a compellable witness in a civil suit or proceeding respecting any information, material, statement or test acquired, furnished, obtained, made or received under the powers conferred under this Act.

(4) The Director may communicate or allow to be communicated, disclosed or published information, material, statements, or the result of a test acquired, furnished, obtained, made or received under the powers conferred by this Act and the regulations.

(5) No person to whom information is communicated under this section or sections 6 and 7 shall divulge the name of the informant to any person except for the purposes of this Act. New.

General offence section: s. 26(1)

CONSUMER PROTECTION ACT R.S.O. 1970, Chap. 82, ss. 26, 29a[as enacted by 1971, Vol. 2, c. 50, s. 23(7)]

26. (1) Every itinerant seller shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the itinerant seller and certified by a person licensed under The Public Accountancy Act .

(2) The information contained in a financial statement filed under subsection 1 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 14, s. 2, part.

29a. (1) Each person employed in the administration of this Act, including any person making an inspection under section 22, 23 or 24 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment or inspection and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

General offence section: s. 48(1), 29(1)(b)

CONSUMER REPORTING ACT , 1973 S.O. 1973, Chap. 97, s. 18

18. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 15, 16 or 17 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

General offence section: s. 22(1) (b) (c)

CO-OPERATIVE CORPORATIONS ACT, 1973 S.O. 1973, Chap. 101, s. 142

142. (1) Upon the request of the Minister, every co-operative shall furnish to the Minister such information as he may require to enable him,

- (a) to compile statistical records and information in such form as the Minister may require;
- (b) to facilitate the carrying on of research projects;
- (c) to establish that all persons to whom this Act applies are not in contravention of this Act; and
- (d) to establish that the business and affairs of the co-operative are being conducted on a co-operative basis.

(2) The Minister or any employee in the Ministry shall not disclose any information contained in a return made under subsection 1, except where that disclosure is necessary for the administration or enforcement of this

Act or where the disclosure is required by a court for the purposes of an action, prosecution or other proceeding.

General offence section: s. 176(1)

CORPORATIONS INFORMATION ACT, 1976 S.O. 1976, Chap. 66, s. 8

8. (1) The Minister may at any time by notice in writing, given by prepaid mail or otherwise, require any corporation to file within the time specified in the notice a return upon any subject connected with its affairs and relevant to the administration or enforcement of this Act, The Business Corporations Act, The Corporations Act or The Co-operative Corporations Act, 1973.

(2) The Minister or any employee of the Ministry shall not disclose any information contained in a return made under subsection 1 except where the disclosure is necessary for the administration or enforcement of this Act, The Business Corporations Act, The Corporations Act or The Co-operative Corporations Act, 1973 or where disclosure is required by a court for the purposes of an action, prosecution or other proceeding. 1971, c. 27, s.5, amended.

General offence section: s. 11(1)

CORPORATIONS TAX ACT, 1972 S.O. 1972, Chap. 143, s. 166

166. (1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any such person to inspect or have access to any written statement furnished under this Act. R.S.O. 1970, c. 91, s. 93(1).

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. R.S.O. 1970, c. 91, s. 93(2).

(3) Notwithstanding subsection 1, the Minister may, for the purposes of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. R.S.O. 1970, c. 91, s. 93(3).

COUNTY OF OXFORD ACT, 1974 S.O. 1974, Chap. 57, s. 21(1)

21. (1) Any person may, at all reasonable hours, inspect any of the records, books or documents in the possession or under the control of the clerk, except interdepartmental correspondence and reports of officials of any department or of solicitors for the County made to the County Council or any of its committees, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand and the seal of the County to any applicant on payment at the rate of 15 cents for every 100 words or at such lower rate as the County Council may fix.

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, 1972 S.O. 1972, Chap. 67, ss. 36(1) (9) [as re-enacted by 1974, c. 135, s. 13], 47 [as re-enacted by 1974, c. 135, s. 17], 49 [49(5) as re-enacted by 1974, c. 135, s. 18]

36. (1) There is hereby established a tribunal to be known as the Ontario Public Service Labour Relations Tribunal.

(9) The chairman, each vice-chairman and each member of the Tribunal shall, before entering upon his duties, take and subscribe before the Clerk of the Executive Council and file in the office of the Clerk an oath of office in the following form:

I solemnly swear that I will faithfully, truly and impartially, to the best of my judgement, skill and ability, execute and perform the office of chairman, (or vice-chairman, or member) of the Ontario Public Service Labour Relations Tribunal and I will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Tribunal.
So help me God.

47. No chairman, vice-chairman or member of the Tribunal or of a board or of the Grievance Settlement Board and no person appointed thereby shall be required to give evidence in any civil action, suit or other proceedings respecting information obtained in the discharge of his duties under this Act.

49. (1) The records of an employee organization relating to membership or any records that may disclose whether a person is or is not a member of an employee organization or does or does not desire to be represented by an employee organization produced in a proceeding before the Tribunal is for the exclusive use of the Tribunal and its officers and shall not, except with the consent of the Tribunal, be disclosed, and no person shall, except with the consent of the Tribunal, be compelled to disclose whether a person is or is not a member of an employee organization or does or does not desire to be represented by an employee organization.

(2) No information or material furnished to or received by a mediator under this Act shall be disclosed, except to the Tribunal, unless otherwise authorized by the party providing the information or material.

(3) No report of a mediator shall be disclosed except to the Tribunal.

(4) A mediator appointed under this Act is not a competent or compellable witness in proceedings before a court or other tribunal respecting any information or material furnished to or received by him, or any statement made to or by him in an endeavour to effect a collective agreement.

(5) The chairman, vice-chairman or vice-chairmen or any member of the Tribunal or of a board or of the Grievance Settlement Board is not a competent or compellable witness in proceedings before a court or other tribunal respecting,

- (a) any information or material furnished to or received by him;
- (b) any evidence or representation submitted to him; or
- (c) any statement made by him,

in the course of his duties under this Act.

General offence section: s. 42(1)

DENTURE THERAPISTS ACT, 1974 S.O. 1974, Chap. 34, ss. 11(5)(d), 22

11. (5) Where the Discipline Committee finds a licensee guilty of professional misconduct or incompetence it may by order,

- (d) reprimand the licensee, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;

22. (1) Every person employed in the administration of this Act, including any person making an inquiry or investigation under section 21 and any member of the Board or a Committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 21 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations or by-laws.

DEPOSITS REGULATION ACT R.S.O. 1970, Chap. 127, s. 5a as enacted by 1971, Vol. 2, c. 50, s. 32(3)

5a. Every person employed in the administration of this Act, including any person making an investigation or inquiry under this Act, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, investigation or inquiry and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations, or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

DISTRICT MUNICIPALITY OF MUSKOKA ACT R.S.O. 1970, Chap. 131, s. 19(1)

19. (1) Any person may, at all reasonable hours, inspect any of the records, books or documents in the possession or under the control of the clerk, except interdepartmental correspondence and reports of officials of any department or of solicitors for the District Corporation made to the District Council or any of its committees, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand and the seal of the District Corporation to any applicant on payment at the rate of 15 cents for every 100 words or at such lower rate as the District Council may fix. 1970, c. 32, s. 20(1)

EDUCATION ACT, 1974 S.O. 1974, Chap. 109, s. 231(1) (2) (3) (6) (7) (9) (10) (13)

231. (1) In this section, except in subsection 12, "record" in respect of a pupil means a record maintained or retained by the principal of a school in accordance with the regulations.

(2) A record is privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record,

- (a) subject to subsections 3 and 5, is not available to any other person; and
- (b) except for the purposes of subsection 5, is not admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record,

without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil.

(3) A pupil, and his parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil. 1972, c. 77, s. 14, part.

(6) Nothing in subsection 2 prohibits the use by the principal of the record in respect of a pupil to assist in the preparation of,

- (a) a report required by this Act or the regulations; or

(b) a report

- (i) for an educational institution or for the pupil or former pupil, in respect of an application for further education, or
- (ii) for the pupil or former pupil in respect of an application for employment,

where a written request is made by the former pupil, the pupil where he is an adult, or the parent or guardian of the pupil where the pupil is a minor.

(7) Nothing in this section prevents the compilation and delivery of such information as may be required by the Minister or by the board. 1972, c. 77, s. 14, part.

(9) Except where the record has been introduced in evidence as provided in this section, no person shall be required in any trial or other proceeding to give evidence in respect of the content of a record.

(10) Except as permitted under this section, every person shall preserve secrecy in respect of the content of a record that comes to his knowledge in the course of his duties or employment, and no such person shall communicate any such knowledge to any other person except,

- (a) as may be required in the performance of his duties; or
- (b) with the written consent of the parent or guardian of the pupil where the pupil is a minor; or
- (c) with the written consent of the pupil where the pupil is an adult. 1972, c. 77, s. 14, part.

(13) Nothing in this section prevents the use of a record in respect of a pupil by the principal of the school attended by the pupil or the board that operates the school for the purposes of a disciplinary proceeding instituted by the principal in respect of conduct for which the pupil is responsible to the principal. New.

ELECTION ACT R.S.O. 1970, Chap. 142, ss. 63, 68

63. No person shall communicate any information obtained at a polling place as to the candidate for whom a voter at the polling place is about to vote or has voted. 1968-69, c. 33, s. 63

68. Every returning officer and every deputy returning officer, clerk, constable, official agent, scrutineer and other person authorized to attend at a polling place, or at the counting of the votes, shall before entering on his duties take the prescribed oath of secrecy. 1968-69, c. 33, s. 68.

General offence section: s. 142 as re-enacted by 1971, vol. 2, c. 100, s. 9

NOTE: The Act also contains a number of provisions providing for (a) the sealing up of election materials pending a final determination of election results; (b) secrecy in voting proceedings.

EMPLOYMENT STANDARDS ACT, 1974 S.O. 1974, Chap. 112, s. 45(3)(4)

45. (3) No employment standards officer is a competent or compellable witness in a civil suit or proceeding respecting any information, material or statements acquired, furnished, obtained, made or received under the powers conferred under this Act except for the purposes of carrying out his duties under this Act.

(4) No employment standards officer shall be compelled or required to produce in a civil suit or proceeding any document, extract, report, material or statement acquired, furnished, obtained, made or received under the powers conferred under this Act except for the purposes of carrying out his duties under this Act. New.

ENERGY ACT, 1971 S.O. 1971, Vol. 2, Chap. 44, s. 6

6. (1) An inspector shall not publish, disclose or communicate to any person any information, record, report or statement acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his duties under this Act and the regulations.

(2) An inspector is not a compellable witness in a civil suit or proceeding respecting any information, record, report, statement or test acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations.

(3) The Director may disclose or publish information, material, statements or result of a test acquired, furnished, obtained or made under the powers conferred under this Act and the regulations.

General offence section: s. 27(a)

ENVIRONMENTAL ASSESSMENT ACT, 1975 S.O. 1975, Chap. 69, ss. 13 [Part I], 21 [Part III], 28 [Part IV], 31, 33e [Part V]

13. Where an environmental assessment has been accepted or amended and accepted, and no hearing has been held pursuant to section 12, the proponent or a person who has made a written submission pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice mentioned in section 9 or the notice mentioned in subsection 2 of section 10, require a hearing by the Board with respect to,

- (a) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and
- (b) whether the approval mentioned in clause a should be given subject to terms and conditions and, if so, the provisions of such terms and conditions, and

the Minister, by notice in writing,

- (c) may, where he considers it advisable; or
- (d) shall, upon receipt of any such notice requiring a hearing, unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay, require the Board to hold a hearing.

21. No member, employee or appointee of the Board shall be required to give testimony in any proceeding with regard to information obtained by him in the discharge of his duties as a member, employee or appointee of the Board.

28. (1) Every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matter to any person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of any survey, examination, test or inquiry under this Act or the regulations.

31. Notwithstanding any other provision of this Act, where the Minister is of the opinion that compliance with any provision of this Act is causing, will cause or will likely cause the disclosure of matters that are of such a nature that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of disclosing such matters to the public, the Minister may make such order for the protection of such person or the public interest as he considers necessary or advisable.

33. The Minister, for the purposes of the administration and enforcement of this Act and the regulations may,

- (e) gather, publish and disseminate information with respect to the environment or environmental assessments;

General offence section: s. 40

ENVIRONMENTAL PROTECTION ACT, 1971 S.O. 1971, Vol. 2, Chap. 86, ss. 3(f), 87

3. The Minister, for the purposes of the administration and enforcement of this Act and the regulations , may,

- (f) gather, publish and disseminate information relating to contaminants, pollution, waste and litter;

87. (1) Except as to information in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matters to any person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony, other than testimony in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, in any civil suit or proceeding with regard to information obtained by him in the course of any survey, examination, test or inquiry under this Act or the regulations.

General offence section: s. 102(1) as amended by 1972, c. 106, s. 32

EXPROPRIATIONS ACT R.S.O. 1970, Chap. 154, s. 30(4)

30. (4) The Board may prepare and periodically publish a summary of such of its decisions and the reasons therefor as the Board considers to be of general public significance. 1968-69, c. 36, s. 30(4).

FUNERAL SERVICES ACT, 1976 S.O. 1976, Chap. 83 (to come into force on proclamation) , s. 32

32. (1) Every person employed in the administration of this Act, including any person making an inquiry, investigation or inspection under section 31 and any member of the Board or a committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, investigation or inspection under section 31 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations or by-laws.

General offence section: s. 38(3)

GASOLINE TAX ACT, 1973 S.O. 1973, Chap. 99, s. 30

30. (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act. R.S.O. 1970, c. 190, s. 6(1), amended .

(2) Notwithstanding any other Act, but subject to subsection 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections 1 and 2 do not apply in respect of,

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax .

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) the person from whom the book, record, writing, return or other document was obtained; or

(b) any person,

- (i) for the purposes of any objection or appeal that has
has been or may be taken by that person under this Act
arising out of any assessment of tax, interest or penalties
under this Act in connection with which the book, record,
writing, return or other document was obtained, or
- (ii) by whom any amount payable under this Act is payable or
has been paid,

or the legal representative of any person mentioned in clause a or b or
the agent of any such person authorized in writing in that behalf. New.

(6) Notwithstanding anything in this Act, the Minister may permit
information or a copy of any book, record, writing, return or other document
obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or
employee employed under a minister of the Government of
Canada for the purposes of administration of any Act of the
Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or
officer or employee employed under that minister, for the
purposes of administering and enforcing an Act of the Leg-
islature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government
of another province, as the case may be, is permitted to give to the Minister
information or copies of any book, record, writing, return or other document
obtained by or on behalf of the minister of the Government of Canada, or the
minister of the government of that other province, as the case may be, in the
administration or enforcement of that Act for the purposes of the administration
of this Act. R.S.O. 1970, c. 190, s. 6(2), amended.

General offence section: s. 23

GIFT TAX ACT, 1972 S.O. 1972, Chap. 12, ss. 52, 54(1) (b)

52. (1) Except as authorized by this section, no official or authorized person shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to subsection 3, no official or authorized person shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections 1 and 2 do not apply in respect of,

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.

(4) An official or authorized person may, in the course of his duties in connection with the administration or enforcement of this Act,

- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes and information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement

of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) the person from whom the book, record, writing, return or other document was obtained; or
- (b) any person,
 - (i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in respect of property comprising a gift in connection with which the book, record, writing, return or other document was obtained, or
 - (ii) by whom any amount payable under this Act on or in respect of the gift is payable or has been paid,

or the legal representative of any person mentioned in clause a or b or the agent of any such person authorized in writing in that behalf.

(6) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the Minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act.

54. (1) With the approval of the Lieutenant Governor in Council, the Minister may enter into agreements with the Government of Canada and the government of any other province of Canada,

- (b) respecting the obtaining of information and copies of books, records, writings, returns and other documents relating to gifts and the valuation of property from other sources and the release of information and copies of books, records, writings, returns and other documents obtained by or on behalf of the Minister for the purposes of this Act to the Government of Canada or the governments of other provinces of Canada or both;

General offence section: s. 56

HEALTH DISCIPLINES ACT, 1974 S.O. 1974, Chap. 47, ss. 37(5) (d), 41 [Part II- Dentistry], 60(5) (d), 65 [Part III- Medicine], 84(5) (d) [Part IV- Nursing], 107(5) (d), 111 [Part V- Optometry], 133(5) (d), 137 [Part VI- Pharmacy]

37. (5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;

NOTE: ss. 60(5) (d), 84(5) (d), 107(5) (d), 133(5) (d) are not reproduced here as their wording is identical to that of s. 37(5) (d) above.

41. (1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 40 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 40 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of The Health Insurance Act, 1972;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

65. (1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 64, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 64 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or
- (b) as may be required for the enforcement of The Health Insurance Act, 1972;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

111. (1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 110 and any member of the Council or a Committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 110 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of The Health Insurance Act, 1972 ;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

137. (1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 136, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;
- (b) as may be required for the enforcement of The Health Insurance Act, 1972;
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

General offence section: s. 165(3)

HEALTH INSURANCE ACT, 1972 S.O. 1972, Chap. 91, s. 44 [44(1) as amended by 1974, c. 60, s. 9; 44(2)(e) as re-enacted by 1974, c. 86, s. 2]

44. (1) Each member of the Medical Review Committee, every practitioner review committee, the Medical Eligibility Committee and the Appeal Board and each employee thereof, the General Manager and each person engaged in the administration of this Act and the regulations shall preserve secrecy with respect to all matters that come to his knowledge in the course of his employment or duties pertaining to insured persons and any insured services rendered and the payments made therefor, and shall not communicate any such matters to any other person except as otherwise provided in this Act.

(2) A person referred to in subsection 1 may furnish information pertaining to the date or dates on which insured services were provided and for whom, the name and address of the hospital and health facility or person who provided the services, the amounts paid or payable by the Plan for such services and the hospital, health facility or person to whom the money was paid or is payable, but such information shall be furnished only,

- (a) in connection with the administration of this Act, The Medical Act, The Public Hospitals Act, The Private Hospitals Act, The Ambulance Act or the Hospital Insurance and Diagnostic Services Act (Canada), the Medical Care Act (Canada) or the Criminal Code (Canada), or regulations made thereunder;
- (b) in proceedings under this Act or the regulations;
- (c) to the person who provided the service, his solicitor or personal representative, the executor, administrator or committee of his estate, his trustee in bankruptcy or other legal representative;
- (d) to the person who received the services, his solicitor, personal representative or guardian, the committee or guardian of his estate or other legal representative of that person; or
- (e) pursuant to a subpoena by a court of competent jurisdiction.

(3) The information referred to in subsection 1 may be published by the Ministry of Health in statistical form if the individual names and identities of persons who received insured services are not thereby revealed.

(4) The General Manager may communicate information of the kind referred to in subsection 2 and any other information pertaining to the nature of the insured services provided and any diagnosis given by the person who provided the services to the statutory body governing the profession or to a professional association of which he is a member.

General offence section: s. 50

HUMAN TISSUE GIFT ACT, 1971 S.O. 1971, Vol. 2, Chap. 83, s. 11

11. (1) Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person,

- (a) who has given or refused to give a consent;
- (b) with respect to whom a consent has been given; or
- (c) into whose body tissue has been, is being or may be transplanted, may become known publicly.

(2) Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection 1 does not apply.

General offence section: s. 13

INCOME TAX ACT R.S.O. 1970, Chap. 217, ss. 44, 48(1) (3) (4)

44. (1) Every person who, while employed in the administration of this Act, has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under this Act or has allowed any such person to inspect or have access to any written statement furnished under this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. 1961-62, c. 60, s. 42(1).

(2) Subsection 1 does not apply to the communication of information between,

- (a) the Minister and the Provincial Minister; or
- (b) the Minister, acting on behalf of Ontario, and the Provincial Minister, the Provincial Secretary-Treasurer, or the Minister of Finance of the government of,
 - (i) an agreeing province, or
 - (ii) a non-agreeing province to which an adjusting payment may be made under subsection 2 of section 52.

1962-63, c. 61, s. 5; 1970, c. 7, s. 23.

48. (1) The Treasurer, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, enter into a collection agreement with the Government of Canada pursuant to which the Government of Canada will collect taxes payable under this Act on behalf of Ontario and will make payments to Ontario in respect of the taxes so collected in accordance with such terms and conditions as the collection agreement prescribes.

(3) Where a collection agreement is entered into, the Minister, on behalf of, or as agent for, the Provincial Minister, is hereby authorized to employ all the powers, to perform all the duties and to exercise any discretion that the Provincial Minister or the deputy head has under this Act including the discretion to refuse to permit the production in judicial or other proceedings in Ontario of any document that it is not, in the opinion of the Minister, in the interest of public policy to produce. 1961-62, c. 60, s. 46(3); 1970, c. 7, s. 25.

(4) Where a collection agreement is entered into, the Deputy Minister of National Revenue for Taxation of Canada may,

(a) employ all the powers, perform the duties and exercise any discretion that the Minister has under subsection 3 or otherwise under this Act; and

(b)

INDUSTRIAL SAFETY ACT, 1971 S.O. 1971, Vol. 2, Chap. 43, ss 13, 14, 15

13. (1) An inspector, a person who accompanies an inspector, or a person designated by the chief inspector who makes an examination, test inquiry, or takes samples shall not publish, disclose or communicate to any person any information, material, statement or test, acquired, furnished, obtained, made or received under the powers conferred by this Act and the regulations except for the purposes of carrying out his duties under this Act or the regulations.

(2) No report of an inspector, a person who accompanies an inspector, or a person designated by the chief inspector who makes an examination, test, inquiry or takes samples shall be communicated, disclosed or published to any person except for the purposes of carrying out his duties under this Act or the regulations.

(3) Neither an inspector nor a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is a compellable witness in a civil suit or proceeding respecting any information, material, statement or test acquired, furnished, obtained, made or received under the powers conferred under this Act.

(4) The chief inspector may communicate or allow to be communicated, disclosed or published information, material, statements, or the result of a test acquired, furnished, obtained, made or received under the powers conferred by this Act and the regulations.

(5) No person to whom information is communicated under section 8 shall divulge the name of the informant to any person except for the purposes of this Act. R.S.O. 1970, c. 220, s. 13(1-4), amended.

14. The chief inspector may upon receipt of a request in writing from an owner of an industrial establishment and upon payment of the prescribed fee or fees, furnish to the employer or to a person designated by him copies of reports or directions of inspectors made in respect of the industrial establishment as to its compliance or otherwise with the provisions of section 22. New.

15. The chief inspector may, upon receipt of a request in writing from an employer and upon payment of the prescribed fee or fees, furnish to the employer or to a person designated by him copies of reports or directions of inspectors made in respect of the industrial establishment as to its compliance or otherwise with the provisions of section 24. New.

General offence sections: ss. 36(a), 39

INSURANCE ACT R.S.O. 1970, Chap. 224, ss. 18, 90

18. The Superintendent may publish from time to time notices, reports, correspondence, results of hearings, decisions and any other matter considered by the Superintendent to be in the public interest. 1970, c. 134, s. 3.

90. Any information, document, record, statement or thing made or disclosed to the Superintendent concerning a person licensed or applying for license under this Act is absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of such person. R.S.O. 1960, c. 190, s. 83.

General offence section: s. 94(1) (b) (c) as re-enacted by 1973, c. 124, s. 11

JUDICATURE ACT R.S.O. 1970, Chap. 228, 68a(2)(3)(4) as enacted by 1974,
c. 81, s. 3

68a. (2) Subject to subsection 3, no person shall,

(a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,

(i) at a judicial proceeding, or

(ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or

(iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or

(b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause a.

(3) Subsection 2 does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;

(b) in connection with any investive, ceremonial, naturalization or similar proceedings; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.

(4) Every person who is in contravention of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

JURIES ACT, 1974 S.O. 1974, Chap. 63, s. 22

22. The jury roll and every list containing the names of the jury drafted for any panel shall be kept under lock and key by the sheriff and every officer mentioned in section 20 having a copy thereof, and except in so far as may be necessary in order to prepare the panel lists, and serve the jury summons, shall not be disclosed by the sheriff, his deputy, officer, clerk, or by any officer mentioned in section 17 or 20, or by any other person, until ten days before the sittings of the court for which the panel has been drafted, and during such period of ten days, the sheriff, or his deputy, and any officer mentioned in section 20 having a copy of the panel list shall permit the inspection at all reasonable hours of the jury roll and of the panel list or copy thereof in his custody by litigants or accused persons or their solicitors and shall furnish the litigants or accused persons or their solicitors, upon request and payment of a fee of \$2, with a copy of any such panel list. R.S.O. 1970, c. 230, s. 65, amended.

LABOUR RELATIONS ACT R.S.O. 1970, Chap. 232, ss. 23, 63(4), 91(8), 98 [as re-enacted by 1975, c. 76, s. 25], 100 [100(6) as re-enacted by 1975, c. 76, s. 26]

23. Each member of a conciliation board shall, before entering upon his duties, take and subscribe before a person authorized to administer oaths or before another member of the board, and file with the Minister, an oath in the following form:

I do solemnly swear that I am not disqualified under section 19 of The Labour Relations Act from acting as a member of a conciliation board and that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute and perform the office of member (or chairman) of the conciliation board established to.....
.....
and that I will not, except as I am legally authorized, disclose to any person any of the evidence or other matter brought before the board. So help me God.

R.S.O. 1960, c. 202, s. 21; 1966, c. 76, s. 6

63. (4) A strike vote or a vote to ratify a proposed collective agreement taken by a trade union shall be by ballots cast in such a manner that a person expressing his choice cannot be identified with the choice expressed. 1970, c. 85, s. 24, part.

NOTE: The Act also contains a provision providing for the sealing up of voting materials pending a final determination of voting results.

91. (8) Each member of the Board shall, before entering upon his duties, take and subscribe before the Clerk of the Executive Council and file in his office an oath of office in the following form:

I do solemnly swear that I will faithfully, truly and impartially, to the best of my judgement, skill and ability, execute and perform the office of chairman, (or vice-chairman, or member) of the Ontario Labour Relations Board and I will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Board. So help me God.

R.S.O. 1960, c. 202, s. 75(5); 1966,
c. 76, s. 28(4).

98. Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil suit or in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

100. (1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union. R.S.O. 1960, c. 202, s. 83(1).

(2) No information or material furnished to or received by a conciliation officer or a mediator,

(a) under this Act; or

(b) in the course of any endeavour that a conciliation officer may make under the direction of the Minister to effect a collective agreement after the Minister,

(i) has released the report of a conciliation board or a mediator, or

(ii) has informed the parties that he does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Department of Labour.

(3) No report of a conciliation officer shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Department of Labour.

(4) The Minister, the Deputy Minister of Labour, the chief conciliation officer of the Department of Labour or any conciliation officer or mediator appointed under this Act or any person designated by the Minister to endeavour to effect a collective agreement is not a competent or compellable witness in proceedings before a court or other tribunal respecting any information, material or report mentioned in subsection 2 or 3, or respecting any information or material furnished to or received by him, or any statement made to or by him in an endeavour to effect a collective agreement.

(5) The chairman or any other member of a conciliation board is not a competent or compellable witness in proceedings before a court or other tribunal respecting,

(a) any information or material furnished to or received by him;

(b) any evidence or representation submitted to him; or

(c) any statement made by him,

in the course of his duties under this Act. 1964, c. 53, s. 11.

(6) No information or material furnished to or received by a labour relations officer under this Act and no report of a labour relations officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no labour relations officer is a competent or compellable witness in proceedings before a court, the Board or other tribunal respecting any such information, material or report.

General offence section: s. 85(1)(2)

LAND SPECULATION TAX ACT, 1974 S.O. 1974, Chap. 17, s. 18

18. (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to subsection 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsection 1 and 2 do not apply in respect of,

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings related to the administration or enforcement of this Act or the collection or assessment of tax.

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(5) Notwithstanding any other provision of this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) the person from whom the book, record, writing, return or other document was obtained; or
- (b) any person,
 - (i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or
 - (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause a or b or the agent of any such person authorized in writing in that behalf.

(6) Notwithstanding any other provision of this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act.

General offence section: s. 16(2)

LAW SOCIETY ACT R.S.O. 1970, Chap. 238, s. 13(1)(2), 37

13. (1) The Minister of Justice and Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do with the legal profession in any way, and for this purpose he may at any time require the production of any document, paper, record or thing pertaining to the affairs of the Society.

(2) No admission of any person in any document, paper, record or thing produced under subsection 1 is admissible in evidence against that person in any proceedings other than disciplinary proceedings under this Act. 1970, c. 19, s. 13(1,2).

37. If a committee of Convocation finds that a member has been guilty of professional misconduct or conduct unbecoming a barrister and solicitor which in its opinion does not warrant disbarment, suspension or reprimand in Convocation, the Committee may by order reprimand him. 1970, c. 19, s. 37.

[cf. s. 38 with respect to student members' misconduct]

LEGAL AID ACT R.S.O. 1970, Chap. 239, ss. 25, 26(1) (n) (o)

25. All communications between the Director, an area director, a member of an area legal aid committee or an assessment officer, on the one hand, and an applicant for or a recipient of legal aid, on the other hand, are privileged for the purposes of the rules of evidence in the same manner and to the same extent as solicitor-client communications. 1968-69, c. 60, s. 10.

26. (1) Subject to the approval of the Lieutenant Governor in Council, the Law Society may make regulations respecting the establishment and administration of a legal aid plan and, without limiting the generality of the foregoing, may make regulations,

- (n) prescribing oaths of office and secrecy and requiring persons, or any class thereof, engaged in the administration of this Act to take and subscribe such oaths or either of them;
- (o) respecting the non-disclosure of information furnished by or about an applicant for or recipient of legal aid;

LEGISLATIVE ASSEMBLY ACT R.S.O. 1970, Chap. 240, 90(1) [as enacted by 1974, c. 116, s. 3], FORM 3 [as enacted by 1974, c. 116, s. 4]

90. (1) Every employee of the Office of the Assembly shall, before any salary is paid to him, take and subscribe before the Speaker, the Clerk of the Legislative Assembly, or a person designated in writing by either of them, an oath of office and secrecy in Form 3.

FORM 3

(Section 90)

I,, do swear that I will faithfully discharge my duties as an employee of the Office of the Assembly and will observe and comply with the laws of Canada and Ontario, and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Assembly.

So help me God.

LIQUOR LICENSE ACT, 1975 S.O. 1975, Chap. 40, s. 25

25. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under this Act, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act.

General offence section: s. 55(1)(c)

MENTAL HEALTH ACT R.S.O. 1970, Chap. 269, ss. 17, 31(8)

17. Notwithstanding this or any other Act or any regulation made under any other Act, the senior physician may report all or any part of the information compiled by the psychiatric facility to any person where, in the opinion of the senior physician, it is in the best interests of the person who is the subject of an order made under section 14 or 15. 1967, c. 51, s. 17.

31. (8) Upon the conclusion of an inquiry, the chairman shall prepare a written report of the recommendations of the advisory review board and, within the time prescribed by the regulations, shall transmit a copy thereof to the Lieutenant Governor in Council, and may in his discretion transmit a copy thereof to any other person. 1967, c. 51, s. 31.

MINING ACT R.S.O. 1970, Chap. 274, ss. 611(7), 617(10)

611. (7) Where a person drills or bores a brine well, he shall forward a log of the drilling or boring in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the drilling or boring operations, and, upon his request in writing, the log shall be confidential for a period of six months.

617. (10) Every such plan [mine or plant plans under 617(1-9)] shall be treated as confidential information for the use of the officers of the Department and shall not be exhibited, nor shall any information contained therein be imparted to any person except with the written permission of the owner or agent of the mine or plant. 1970, s. 79, s. 2, part.

General offence section: 632(2)

MINING TAX ACT, 1972 S.O. 1972, Chap. 140, s. 11(1)

11. (1) It is lawful at all times for a mine assessor, assistant mine assessor or special mine assessor to enter upon any mining premises in Ontario for the purpose of making inquiries, obtaining information and otherwise performing his duties under this Act, and for any of these purposes a mine assessor may descend all pits and shafts, and may use all tackle, machinery, appliances and things belonging to the mine as he considers necessary or expedient, and shall be given free ingress and egress to, from and over all buildings, erections, structures and vessels used in connection with the mine and any mill, smelter or refinery at which the mineral substance taken from the mine is treated or in any way modified and shall be allowed to take from time to time from any mining premises such samples or specimens of mineral substance as he desires for the purpose of determining by assay or otherwise the value of any mineral substance being taken from the mine or the value of any product of the output of the mine that results from the treatment or modification of any mineral substance taken from the mine and shall be given full and complete access to all books of account, letters and other documents kept or used for or in connection with the work and business of the mine or with the sale of the output or the product of the output from the mine, and may examine the same and take copies thereof or extracts therefrom, but any information of a private or confidential nature acquired by a mine assessor, assistant mine assessor or special mine assessor under this section shall not be communicated or disclosed to anyone except in so far as it is necessary to do so for the purposes of this Act. R.S.O. 1970, c. 275, s. 9 as amended.

MINISTRY OF HEALTH ACT, 1972 S.O. 1972, Chap. 92, s. 6(2) (d)

6. (2) The Minister in exercising his powers and carrying out his duties and functions under this Act,

(d) may collect such information and statistics respecting the state of health of members of the public, health resources, facilities and services and any other matters relating to the health needs or conditions affecting the public as are considered necessary or advisable, and publish any information so collected; and

(e)

MINISTRY OF TREASURY, ECONOMICS AND INTERGOVERNMENTAL AFFAIRS ACT, 1972

S.O. 1972, Chap. 3, s. 15

15. Every person who is to examine the accounts or inquire into the affairs of any ministry pursuant to this Act shall be required to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by, persons employed in that ministry.

MORTGAGE BROKERS ACT R.S.O. 1970, Chap. 278, ss. 27(3) (4), 25b [as re-enacted by 1971, Vol. 2, c. 50, s. 59(4)]

27. (3) Every mortgage broker shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the mortgage broker and certified by a person licensed under The Public Accountancy Act.

(4) The information contained in a financial statement filed under subsection 3 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 71, s. 27.

25b. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 22, 23, 24, 25 or 25a shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceedings with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

General offence section: 31(1) (b) (c)

MOTOR VEHICLE FUEL TAX ACT R.S.O. 1970, Chap. 282, s. 19

19. (1) Subject to subsection 2, no person employed by the Government of Ontario shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act.

(2) The Minister may,

- (a) communicate or allow to be communicated information obtained under this Act; or
- (b) allow inspection of or access to any written statement furnished under this Act,

to any person employed by the Government of Canada or any province of Canada provided that the information and written statements obtained by such government for the purpose of any Act that imposes a tax are communicated or furnished on a reciprocal basis to the Minister, and provided that the information and written statements will not be used for any purpose other than the administration or enforcement of a federal or provincial law that provides for the imposition of a tax. 1964, c. 67, s. 2, amended.

(3) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. R.S.O. 1960, c. 248, s. 19(2).

MUNICIPAL ACT R.S.O. 1970, Chap. 284, ss. 216(1), 224(3)

216. (1) Except as otherwise provided in any Act, any person, at all reasonable hours, may inspect any records, books, accounts and documents in the possession or under the control of the clerk, except inter-departmental correspondence and reports of officials of any department or of solicitors for the corporation made to council, board of control or any committee of council, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand to any applicant on payment at the rate of 10 cents for every 100 words or such other rate as the council may fix. R.S.O. 1960, c. 249, s. 216(1).

224. (3) The council of a municipality may cause to be published in a newspaper having general circulation in the municipality or to be mailed or delivered to each ratepayer in the municipality such information concerning the activities of the municipality as, in the opinion of the council, would be of interest to the ratepayers. 1965, c. 77, s. 16.

NOTE: s. 24(12) (20) as re-enacted by 1972, c. 121, s. 4(2,4) provides for election by ballot and sealed election returns.

MUNICIPAL ELECTIONS ACT , 1972 S.O. 1972, Chap. 95, s. 93(1) (3)

93. (1) Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting.

(3) No person shall communicate any information obtained at a polling place as to how an elector at such polling place is about to vote or has voted.

General offence section: s. 102

NOTE: This Act contains a number of provisions providing for the sealing up of election materials, secrecy in voting proceedings, and limited access to inspection of ballot boxes.

NORTH PICKERING DEVELOPMENT CORPORATION ACT, 1974 S.O. 1974, Chap. 124, s. 6

6. Before entering upon his duties, every director, officer or employee of the Corporation shall take, and every agent and adviser whose services are engaged by the Corporation may be required by the Corporation to take, before a commissioner of oaths, the following oath or affirmation:

I,.....
do solemnly swear (or affirm) that I will faithfully, honestly and to the best of my judgement, skill and knowledge, execute and perform the duties required of me by the North Pickering Development Corporation Act, 1974 and all rules, directions and instructions thereunder as a director (officer, employee or agent, as the case may be) of the North Pickering Development Corporation and that properly relate to my duties as a director (officer, employee or agent, as the case may be) of the Corporation.

I further solemnly swear (or affirm) that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the business of the Corporation, nor will I without due authority, allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Corporation and relating to the business of the Corporation.

OMBUDSMAN ACT, 1975 S.O. 1975, Chap. 42, ss. 13, 19(2), 20(3)(4)(6), 21, 25(2), 26(3)

13. (1) Before commencing the duties of his office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with subsection 2, disclose any information received by him as Ombudsman.

(2) The Ombudsman may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

19. (2) Every investigation by the Ombudsman under this Act shall be conducted in private.

20. (3) Subject to subsection 4, no person who is bound by the provisions of any Act, other than The Public Service Act, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection 3 applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement.

(6) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

21. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or thing,

- (a) might interfere with or impede investigation or detection of offences;
- (b) might involve the disclosure of the deliberations of the Executive Council; or
- (c) might involve the disclosure of proceedings of the Executive Council or of any committee of the Executive Council, relating to matters of a secret or confidential nature, and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or thing to be produced.

(2) Subject to subsection 1, the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman.

25. (2) The Ombudsman, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Act.

26. (3) The Attorney General may by notice to the Ombudsman exclude the application of subsection 1 [subsection 1 confers on the Ombudsman the power to enter government premises] to any specified premises or class of premises if he is satisfied that the exercise of the powers mentioned in subsection 1 might be prejudicial to the public interest.

General offence section: s. 28(b)

ONTARIO ECONOMIC COUNCIL ACT R.S.O. 1970, Chap. 309, s. 5(b)

5. The Council may,

(b) cause to be published such studies and reports as are prepared by or for the Council;

ONTARIO ENERGY BOARD ACT R.S.O. 1970, Chap. 312, ss. 6(1), 49(3), 55(1-3), 56

6. (1) No member of the Board or its secretary or any of its staff shall be required to give testimony in any proceedings with regard to information obtained by him in the discharge of his official duties. 1964, c. 74, s. 6(1).

49. (3) Neither the Energy Returns Officer nor any of his staff shall be required to give testimony in any civil suit with regard to information obtained by him in the discharge of his official duties. 1964, c. 74, s. 48(3).

55. (1) All information and material furnished to or received or obtained by the Energy Returns Officer, his deputy officers and employees or any person authorized by the chairman of the Board in writing under section 52 is confidential.

(2) No person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of any such material.

(3) Every person who contravenes any of the provisions of subsection 2 is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. 1964, c. 74, s. 54(1-3).

56. No document, record or photocopy thereof or any return made under this Part is admissible in evidence in any proceeding except proceedings respecting an order of the Board or in summary proceedings with respect to offences under section 35. 1964, c. 74, s. 55.

ONTARIO GUARANTEED ANNUAL INCOME ACT, 1974 S.O. 1974, Chap. 58, ss. 3(2), 10, 15(1) (d)

3. (2) The Minister is authorized to enter into and to proceed upon any arrangement with the Minister of National Health and Welfare of the Government of Canada for obtaining, exchanging and keeping confidential any information furnished under this Act or under the Old Age Security Act (Canada), or any arrangement that will, in the opinion of the Minister, facilitate the implementation and carrying out of the provisions of this Act and the payment of increments to which any eligible person is entitled under this Act, but if any such arrangement is made with a person who is not subject to the provision of section 10, the Minister shall take all steps necessary to ensure that any information coming to such person's knowledge concerning any beneficiary or applicant is not divulged or disclosed to any person not legally entitled thereto.

10. (1) Except as provided in subsection 2, all information obtained under this Act by any officer, employee or agent of the Ministry of Revenue is privileged and confidential, and no such officer, employee or agent shall knowingly communicate or allow to be communicated to any person not legally entitled thereto any such information, or allow any person not legally entitled to do so to inspect or have access to any statement or other writing containing such information.

(2) Any information referred to in subsection 1 that is obtained by any officer, employee or agent of the Ministry of Revenue in the administration of this Act may be communicated to any officer or employee of the Department of National Revenue of the Government of Canada, or of the Ministry of Treasury, Economics and Intergovernmental Affairs, or of the Ministry of Community and Social Services, or to any person or class of persons prescribed by the Lieutenant Governor in Council and approved by the Minister of National Health and Welfare of the Government of Canada who are administering a program of assistance payments similar in nature to the payments authorized under this Act.

(3) Notwithstanding any other Act or law, no officer, agent or employee of Her Majesty shall be required, in connection with any legal proceedings, to give evidence relating to any information that is privileged under subsection 1 or to produce any statement or other writing containing any such information.

(4) Subsections 1 and 3 do not apply in respect of proceedings relating to the administration or enforcement of this Act.

15. (1) Every person who,
(d) contravenes section 10

is guilty of an offence and on summary conviction is liable to a fine of not less than \$50 and not more than \$300 for each offence.

ONTARIO HIGHWAY TRANSPORT BOARD ACT R.S.O. 1970, Chap. 316, s. 12(2)

12. (2) No member of the Board or of its staff is required to give testimony in any civil suit with regard to information obtained by him in the discharge of his official duty. R.S.O. 1960, c. 273, s. 11(2).

ONTARIO LAND CORPORATION ACT, 1974 S.O. 1974, Chap. 134, s. 6

6. Before entering upon his duties, every director, officer or employee of the Corporation shall take, and every agent and adviser whose services are engaged by the Corporation may be required by the Corporation to take, before a Commissioner of oaths, the following oath or affirmation:

I,.....
do solemnly swear (or affirm) that I will faithfully, honestly and to the best of my judgement, skill and knowledge, execute and perform the duties required of me by The Ontario Land Corporation Act, 1974 and all rules, directions and instructions thereunder as a director (officer, employee or agent, as the case may be) of the Ontario Land Corporation and that properly relate to my duties as a director (officer, employee or agent, as the case may be) of the Corporation.

I further solemnly swear (or affirm) that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the business of the Corporation, nor will I without due authority, allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Corporation and relating to the business of the Corporation.

ONTARIO MUNICIPAL BOARD ACT R.S.O. 1970, Chap. 323, ss. 31, 74(1)(2), 101

31. No member of the Board or its secretary or any of its staff is required to give testimony in any civil suit with regard to information obtained by him in the discharge of his official duty. R.S.O. 1960, c. 274, s. 31.

101. If any officer or servant of the Board, or any person having access to or knowledge of any return made to the Board or of any evidence taken by the Board in connection therewith, without the authority of the Board first obtained, publishes

or makes known any information, having obtained the same or knowing the same to have been derived from such return or evidence, he is guilty of an offence and on summary conviction is liable to a fine of not more than \$500 and is also liable to imprisonment for a term of not more than six months. R.S.O. 1960, c. 274, s. 101.

74. (1) The Board shall superintend the system of bookkeeping and keeping accounts of the assets, liabilities, revenue and expenditure of all railways and public utilities that are operated by or under the control of a municipality or a local board, and may require from it such returns and statements as to the Board may seem proper, and may extract from such returns and statements such information as, in the opinion of the Board, may be useful for publication, and may embody such portions of such returns and statements in the annual report of the Board as to it may seem proper.

(2) The Board may from time to time require and report as to whether such railway or public utility is operated in such a way that the rates charged in respect thereof are sufficient to pay the debenture debt and interest created in respect thereof, and the cost of operation and maintenance, or whether greater rates are charged than are sufficient for such purposes. R.S.O. 1960, c. 274, s. 74(1,2).

PAPERBACK AND PERIODICAL DISTRIBUTORS ACT, 1971 S.O. 1971, Vol. 2, Chap. 82, s. 12

12. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 10 or 11 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceedings with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

PESTICIDES ACT, 1973 S.O. 1973, Chap. 25, s. 19

19. Except as to information in respect of,

- (a) impairment or potential impairment of the quality of the environment for any use that can be made of it; or
- (b) harm or potential harm to or an adverse effect on any person, living thing or any property,

arising from or likely to arise from the handling, storage, use, disposal, transportation or display of a pesticide or a substance or thing containing a pesticide, every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of an examination, test or inquiry of or into any matter under this Act or the regulations and shall not communicate any such matter to any person except,

- (c) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
 - (d) to his counsel; or
 - (e) with the consent of the person who is responsible for the handling, storage, use, disposal, transportation or display of the pesticide, substance or thing.
- New.

PETROLEUM RESOURCES ACT, 1971 S.O. 1971, Vol. 2, Chap. 94, s. 5

5. (1) An inspector shall not publish, disclose or communicate to any person any information, record, report or statement acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his duties under this Act and the regulations.

(2) An inspector is not a compellable witness in a civil suit or proceeding respecting any information, record, report, statement, or test acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations.

(3) The Minister may disclose or publish information, material, statements or result of a test acquired, furnished, obtained or made under the powers conferred under this Act and the regulations.

General offence section: s. 19(a)

PLANNING ACT R.S.O. 1970, Chap. 349, s. 7

7. (1) Notwithstanding section 78 of The Assessment Act, it is not an offence to disclose the information referred to therein to a member or employee of a planning board who declares that such information is required in the course of his duties.

(2) A member or employee of a planning board who wilfully discloses or permits to be disclosed the information referred to in subsection 1 to any other person not likewise entitled in the course of his duties to acquire or have access to the information is guilty of an offence and on summary conviction is liable to a fine of not more than \$200, or to imprisonment for a term of not more than six months, or to both.

(3) This section does not prevent disclosure of such information by any person when being examined as a witness in an action or other proceeding in a court or in an arbitration. 1968, c. 96, s. 1.

POLICE ACT R.S.O. 1970, Chap. 351, s. 57(4) (8)

57. (4) Upon the request or with the consent of a witness at an inquiry under this section, his evidence shall be taken in private.

(8) Where evidence is taken in private under subsection 4, no person, without the consent of the Commission, shall knowingly disclose any evidence so taken or the name of any witness so examined, and every person who contravenes this subsection is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. 1964, c. 92, s. 17, part.

PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT R.S.O. 1970, Chap. 362, ss. 18, 24

18. Any information received by the Registrar or the Commissioner in connection with an application or a record or return required under this Act or in the course of an inquiry or investigation authorized by this Act shall not be disclosed without the consent of the Commissioner. 1965, c. 102, s. 18.

24. No person shall divulge to anyone, except as is legally authorized or required, any information acquired by him as a private investigator. 1965, c. 102, s. 24.

General offence section: s. 32(1) (b) (c)

PRIVATE SANITARIA ACT R.S.O. 1970, Chap. 363, ss. 3(6) (9) (10), 42

3. (6) Every member of the board shall, before acting, take and subscribe the following oath:

" I, A.B. do swear that I will discreetly, impartially and faithfully execute all the trusts and powers committed to me by virtue of The Private Sanitaria Act, and that I will keep secret all such matters as come to my knowledge in the execution of my office, except when required to divulge the same by legal authority, or so far as I feel myself called upon to do so for the better execution of the duty imposed upon me by the said Act. So help me God. " R.S.O. 1960, c. 307, s. 3(6).

(9) Every such summons and meeting [cf. 3(8)] shall be made and held as privately as possible and in such manner that no proprietor, superintendent or person interested in or employed about or connected with the sanitarium to be visited shall know of the intended visitation. R.S.O. 1960, c. 307, s. 3(9).

(10) If the secretary at any time desires to employ an assistant in the execution of his duties, he shall certify such desire and the name of the proposed assistant to the chairman of the board, and, if such assistant is approved of, the chairman shall administer the following oath to such assistant:

" I, A.B., do swear that I will faithfully keep secret all such matters and things as come to my knowledge in consequence of my employment as assistant to the secretary of the Board of Visitors, appointed for the county or district of by virtue of The Private Sanitaria Act, unless required to divulge the same by legal authority. So help me God."

42. If a person applies to a member of the board to be informed whether any particular person is detained in a sanitarium, the member may give a direction so to do to the secretary of the board who shall on the receipt of such direction make search among the returns made to him under this Act, whether the person inquired for is or , within the then last twelve months, has been detained in a sanitarium under the jurisdiction of the board, and if it appears that he is or has been so detained, the secretary shall deliver to the person applying a statement in writing specifying,

- (a) the name and location of the sanitarium in which the person appears to be or have been detained;
- (b) the name of its proprietor or superintendent;
- (c) the date of admission of such person; and
- (d) in case of his having been removed or discharged, the date of his removal or discharge. R.S.O. 1960, c. 307, s. 40, amended.

PROCEEDINGS AGAINST THE CROWN ACT R.S.O. 1970, Chap. 365, s. 12

12. In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents and examination for discovery apply in the same manner as if the Crown were a corporation, except that,

- (a) the Crown may refuse to produce a document or to answer a question on the ground that the production or answer would be injurious to the public interest;
 - (b) the person who shall attend to be examined for discovery shall be an official designated by the Deputy Minister of Justice and the Deputy Attorney General; and
 - (c) the Crown is not required to deliver an affidavit on production of documents for discovery and inspection, but a list of the documents that the Crown may be required to produce, signed by the Deputy Minister of Justice and Deputy Attorney General, shall be delivered.
- 1965, c. 104, s. 2, amended.

PROFESSIONAL ENGINEERS ACT R.S.O. 1970, Chap. 366, s. 25(1) para. 1,5

25. (1) Subject to subsection 2, where the council finds that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

- 1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
 - 5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.
- 1968-69, c. 99, s. 25(1) para. 1,5.

PUBLIC COMMERCIAL VEHICLES ACT R.S.O. 1970, Chap. 375, s. 15d as enacted by 1971, Vol. 2, c. 50, s. 71(7)

15d. (1) Each person employed in the administration of this Act, including any person making an examination under section 15c, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties or employment or on an examination under section 15c and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

General offence section: s. 16 as amended by 1973, c. 166, s. 12

PUBLIC SERVICE ACT R.S.O. 1970, Chap. 386, s. 10(1)(3)

10. (1) Every civil servant shall before any salary is paid to him take and subscribe before the Clerk of the Executive Council, his deputy minister, or a person designated in writing by either of them, an oath of office and secrecy in the following form:

I,, do swear that I will faithfully discharge my duties as a civil servant and will observe and comply with the laws of Canada and Ontario, and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a civil servant.

So help me God. 1961-62, c. 121, s. 9(1).

(3) A minister may require any person or class of persons appointed to the unclassified service in any department over which he presides to take and subscribe either or both of the oaths set out in subsection 1 and 2.

1961-62, c. 121, s. 9.

PUBLIC TRUSTEE ACT R.S.O. 1970, Chap. 389, s. 18 as enacted by 1971, Vol. 2, c. 50, s. 73(3)

18. Every person employed in the performance of the duties imposed upon the Public Trustee by this or any other Act or by the Lieutenant Governor in Council shall preserve secrecy with respect to all matters that come to his knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to his legal counsel except as may be required in connection with the administration of this Act and the regulations under this Act or any proceedings thereunder.

PUBLIC VEHICLES ACT R.S.O. 1970, Chap. 392, s. 22b as enacted by 1971, Vol. 2, c. 50, s. 74(4)

22b. Each person employed in the administration of this Act, including any person making an examination under section 22a, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties or employment or on an examination under section 22a and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

General offence section: s. 23

PYRAMIDIC SALES ACT, 1972 S.O. 1972, Chap. 57, s. 19

19. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 16, 17 or 18, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

General offence section: s. 24(b) (c)

RACE TRACKS TAX ACT R.S.O. 1970, Chap. 397, s. 12

12. (1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto, any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act.

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. R.S.O. 1960, c. 341, s. 10, amended.

REAL ESTATE AND BUSINESS BROKERS ACT R.S.O. 1970, Chap. 401, ss. 27b [as enacted by 1971, Vol. 2, c. 50. s. 76(5)], 32(4)(5)

27b. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 24, 25, 26, 27 or 27a, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

32. (4) Every broker carrying on the business of trading in real estate shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the proprietor or officer of the broker's business and certified by a person licensed under The Public Accountancy Act.

(5) The information contained in a financial statement filed under subsection 4 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 105, s. 5(4,5)

General offence section: s. 63(1)(b)(c)

REGIONAL MUNICIPALITY OF DURHAM ACT, 1973 S.O. 1973, Chap. 78, s. 21(1)

21. (1) Any person may, at all reasonable hours, inspect any of the records, books or documents in the possession or under the control of the clerk, except interdepartmental correspondence and reports of officials of any department or of solicitors for the Regional Corporation made to the Regional Council or any of its committees, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand and the seal of the Regional Corporation to any applicant on payment at the rate of 15 cents for every 100 words or at such lower rate as the Regional Council may fix.

NOTE: The following sections are identical to that reproduced above and are not reproduced in this report:

REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK ACT, 1973 S.O. 1973, Chap. 96, s. 21(1)

REGIONAL MUNICIPALITY OF HALTON ACT, 1973 S.O. 1973, Chap. 70, s. 21(1)

REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH ACT, 1973 S.O. 1973, Chap. 74, s. 21(1)

REGIONAL MUNICIPALITY OF PEEL ACT, 1973 S.O. 1973, Chap. 60, s. 21(1)

REGIONAL MUNICIPALITY OF SUDBURY ACT, 1972 S.O. 1972, Chap. 104, s. 21(1)

REGIONAL MUNICIPALITY OF WATERLOO ACT, 1972 S.O. 1972, Chap. 105, s. 21(1)

REGIONAL MUNICIPALITY OF NIAGARA ACT R.S.O. 1970, Chap. 406, s. 20(1)

20. (1) Any person may, at all reasonable hours, inspect any of the records, books or documents in the possession or under the control of an officer appointed under section 19, except interdepartmental correspondence and reports of officials of any department or of solicitors for the Regional Corporation made to the Regional Council or any of its committees, and the officer within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand and the seal of the Regional Corporation to any applicant on payment at the rate of 15 cents for every 100 words or at such lower rate as the Regional Council may fix. 1968-69, c. 106, s. 21(1)

NOTE: The following section is identical to that reproduced immediately above and is not reproduced in this report:

REGIONAL MUNICIPALITY OF YORK ACT R.S.O. 1970, Chap. 408, s. 20(1)

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON ACT R.S.O. 1970, Chap. 407, s. 20(1)
as amended by 1972, c. 126, s. 1

20. (1) Any person may, at all reasonable hours, inspect any of the records, books or documents in the possession or under the control of the clerk, except interdepartmental correspondence and reports of officials of any department or of solicitors for the Regional Corporation made to the Regional Council or any of its committees, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand and the seal of the Regional Corporation to any applicant on payment at such rate as the Regional Council may, by by-law, establish.

RETAIL SALES TAX ACT R.S.O. 1970, Chap. 415, s. 14

14. (1) Subject to subsection 2, no person employed by the Government of Ontario shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act. 1964, c. 104, s. 7, part.

(2) The Minister may,

- (a) communicate or allow to be communicated information obtained under this Act; or
- (b) allow inspection of or access to any written statement furnished under this Act,

to any person employed by the Government of Canada or any province of Canada, if the information and written statements obtained by such government for the purpose of any Act that imposes a tax are communicated or furnished on a reciprocal basis to the Minister, and if the information and written statements will not be used for any purpose other than the administration or enforcement of a federal or provincial law that provides for the imposition of a tax. 1964, c. 104, s. 7, part; 1968-69, c. 113, s. 12

General penalty section: s. 38(1)

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT, 1975 S.O. 1975,
Chap. 72, ss. 27, 62, 82

27. (1) If the parties make or renew, as the case may be, an agreement within fifteen days after the Commission has given a copy of the report to each of the parties, the report shall not be made public by the Commission, either of the parties or by any person.

(2) If the parties do not make an agreement, or renew the agreement, as the case may be, within the period of time specified in subsection 1, the Commission shall make public the report of the fact finder.

(3) Notwithstanding subsections 1 and 2, where both parties agree and the Commission approves, the Commission may defer making public the report of the fact finder for an additional period of not more than five days.

62. No member of the Commission shall be required to give testimony in any proceeding under this Act with regard to information obtained by him in the discharge of his duties as a member of the Commission.

82. Notwithstanding any other provision of this Act,

- (a) the Minister of Education;
- (b) the Deputy Minister of Education;
- (c) the chairman, a vice-chairman or a member of the Ontario Labour Relations Board;
- (d) an arbitrator or member or chairman of a board of arbitration;
or
- (e) a selector,

is not a compellable witness in any proceeding under this Act.

General offence section: s. 78(1-3)

SECURITIES ACT R.S.O. 1970, Chap. 426, ss. 24, 25

24. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 21 or 23.
1966, c. 142, s. 24

25. Where an investigation has been made under section 21, the Commission may, and, where an investigation has been made under section 23, the person making the investigation shall, report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. 1966, c. 142, s. 25.

General offence section: 137(1) (c) (d)

STATISTICS ACT R.S.O. 1970, Chap. 443, ss. 4(1) (2) (3), 6, 8, 9

4. (1) No person shall collect, compile, analyse or publish statistical information under this Act until he takes and subscribes before his minister, his deputy minister, or a person designated in writing by either of them, an oath of office and secrecy in the following form:

I,, do swear that I will faithfully discharge my duties under The Statistics Act and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of by duties under The Statistics Act. So help me God.

(2) Subject to section 6, no public servant having knowledge of the answers to questions asked in a questionnaire under this Act shall disclose or give to any person any information or document with respect to such answers without the written permission of his minister, and, except where statistical information is collected jointly under this Act, such permission shall be limited to the disclosing or giving of information or documents to public servants in the minister's department or in prosecutions instituted for offences against this Act.

(3) Notwithstanding anything in this Act, no minister or public servant shall, in any way, use the answers to questions asked in a questionnaire authorized under this Act for any purposes other than the purposes of this Act. 1962-63, c. 133, s. 4(1-3)

6. (1) Where a person who has answered a question in a questionnaire consents in writing, a minister may give permission to a public servant in his department who has knowledge of the answer to disclose or give the answer to one or more public servants in another department.

(2) Subsection 1 does not apply to an index or list, whether released separately or in a report, summary of statistics or other publication under this Act, of answers to the questions in a questionnaire revealing only,

- (a) the names and locations of individual firms or businesses; or
- (b) the types of products commercially produced, manufactured or dealt with by individual firms or businesses,

but no such list or index shall otherwise disclose any of the answers given to the questions in a questionnaire. 1962-63, c. 133, s. 6

8. Any person who,

- (a) in the pretended performance of his duties under this Act, obtains or seeks to obtain information that he is not duly authorized to obtain; or
- (b) discloses or gives any information or document to any person in contravention of subsection 2 of section 4,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$300 or to imprisonment for a term of not more than six months, or to both. 1962-63, c. 133, s. 8

9. Any person who,

- (a) discloses or gives any information or document respecting an answer to a question in a questionnaire authorized under this Act to any person with the intent that the market value of a product is thereby affected; or

- (b) uses an answer in any such questionnaire for the purpose of speculating in a product,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than five years, or to both. 1962-63, c. 133, s. 9.

SUCCESSION DUTY ACT R.S.O. 1970, Chap. 449, s. 43

43. (1) All information and material furnished to or received by the Minister or any officer or servant of the Crown under this or any Act relating to duty is confidential. R.S.O. 1960, c. 386, s. 45(1); 1970, c. 51, s. 33(1)

(2) No person shall, otherwise than in the ordinary course of his duties, communicate any such information to or allow access to or inspection of any such material by any person except officers of such departments of the Government of Canada or of any province of Canada as may be designated by the Minister. R.S.O. 1960, c. 386, s. 45(2); 1970, c. 51, s. 33(2).

(3) Subsection 1 does not apply to any information or material in the office of the registrar of any surrogate court that was filed with him pursuant to this or any other Act, and subsection 2 does not apply to any such registrar or any person employed in his office with respect of such information or material.

(4) Every person who contravenes any of the provisions of subsection 2 is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. R.S.O. 1960, c. 386, s. 45(3,4)

TELEPHONE ACT R.S.O. 1970, Chap. 457, ss. 111, 112

111. Every operator or other person in the employ of a telephone system who divulges the purport or substance of any telephone conversation or message passing over the lines of the system, except when lawfully authorized or directed so to do, is guilty of an offence and on summary conviction is liable to a fine of not more than \$50 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1960, c. 394, s. 111.

112. Every person who, having acquired knowledge of any conversation or message passing over any telephone line not addressed to or intended for such person, divulges the purport or substance of the conversation or message, except when lawfully authorized or directed so to do, is guilty of an offence and on summary conviction is liable to a fine of not more than \$50 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1960, c. 394, s. 112.

TOBACCO TAX ACT R.S.O. 1970, Chap. 463, s. 12

12. (1) Subject to subsection 2, no person employed by the Government of Ontario shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act. 1965, c. 130, s. 11(1).

(2) The Minister may,

- (a) communicate or allow to be communicated information obtained under this Act; or
- (b) allow inspection of or access to any written statement furnished under this Act,

to any person employed by the government of Canada or any province of Canada, provided that the information and written statements obtained by such government for the purpose of any Act that imposes a tax are communicated or furnished on a reciprocal basis to the Minister, and provided that the information and written statements will not be used for any purpose other than the administration or enforcement of a federal or provincial law that provides for the imposition of a tax. 1965, c. 130, s. 11(2); 1970, c. 9, s. 9.

General offence section: s. 13

TRAVEL INDUSTRY ACT, 1974 S.O. 1974, Chap. 115, ss. 16, 21

16. (1) Every travel agent and travel wholesaler shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matter specified by the Registrar and signed by the travel agent and travel wholesaler and certified by a person licensed under The Public Accountancy Act.

(2) The information contained in a financial statement filed under subsection 1 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement.

21. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 17, 18, 19 or 20 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

General offence section: s. 24(1) (b) (c)

UPHOLSTERED AND STUFFED ARTICLES ACT R.S.O. 1970, Chap. 474, s. 9a as enacted by 1971, Vol. 2, c. 50, s. 84(5)

9a. Every person employed in the administration of this Act, including any person making an inspection under section 7, 8, 9 or 31 shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment or inspection and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

General offence section: s. 37(1) (a) (b)

MOTOR VEHICLE DEALERS ACT R.S.O. 1970, Chap. 475, ss. 25b [as re-enacted by 1971, Vol. 2, c. 50, s. 85(4)], 29

25b. (1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 22, 23, 24, 25 or 25a, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

29. (1) Every motor vehicle dealer shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the motor vehicle dealer and certified by a person licensed under The Public Accountancy Act.

(2) The information contained in a financial statement filed under subsection 1 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 136, s. 29.

General offence section: s. 33(1)(b)(c)

NOTE: This Act was amended by 1971, Vol. 2, c. 21, s. 5 such that "motor vehicle dealer" is inserted in lieu of "used car dealer" [see 29(1) above].

VENEREAL DISEASES PREVENTION ACT R.S.O. 1970, Chap. 479, ss. 12(1)(c), (2), 13, 14, 15, 18(2)(3), 21

12. (1) Every person who,

(c) publishes any proceedings taken under this Act or the regulations contrary to subsection 2;

is guilty of an offence and, where no other penalty is prescribed, is liable to a fine of not less than \$25 and not more than \$100 and in default of immediate payment shall be imprisoned for a term of not more than three months.

(2) The Summary Convictions Act applies to prosecutions under this Act or the regulations but all proceedings for the recovery of penalties under this Act and proceedings authorized by section 6 shall be conducted in camera and no person shall publish or disclose any such proceedings except under the authority of this Act or the regulations. R.S.O. 1960, c. 415, s. 12(1)(c), (2).

13. (1) Every person who publicly or privately, verbally or in writing, directly or indirectly, states or intimates that any other person has been notified or examined or otherwise dealt with under this Act, whether such statement or intimation is or is not true, is guilty of an offence, and in addition to any other penalty or liability, is liable to a fine of \$200 and in default of immediate payment shall be imprisoned for a term of not more than six months.

(2) Subsection 1 does not apply,

- (a) to a communication or disclosure made in good faith,
 - (i) to the Minister or Deputy Minister of Health,
 - (ii) to a medical officer of health for his information in carrying out the provisions of this Act,
 - (iii) to a physician,
 - (iv) in the course of consultation for treatment of venereal disease,
 - (v) to the superintendent or head of any place of detention;
- (b) to any evidence given in any judicial proceedings of facts relevant to the issue; or
- (c) to any communication authorized or required to be made by this Act or the regulations.

(3) Notwithstanding subsection 1, a physician may give information concerning the patient to other members of the patient's family for the protection of health. R.S.O. 1960, c. 415, s. 13.

14. Every person engaged in the administration of this Act shall preserve secrecy with regard to all matters that may come to his knowledge in the course of such employment and shall not communicate any such matter to any other person except in the performance of his duties under this Act or when instructed to do so by a medical officer of health or the Minister and in default he shall in addition to any other penalty forfeit his office or be dismissed from his employment. R.S.O. 1960, c. 415, s. 14.

15. No person shall issue or make available to any person other than a physician or such persons as are engaged in the administration of this Act any laboratory report either in whole or in part of an examination made to determine the presence or absence of venereal disease. R.S.O. 1960, c. 415, s. 15.

18. (2) The name of any person infected or suspected to be infected with any venereal disease shall not appear on any account in connection with treatment therefor, but the case shall be designated by a number and it is the duty of every local board of health to see that secrecy is preserved.

(3) Every person who contravenes the provisions of subsection 2 is guilty of an offence and is liable to the penalties provided by sections 13 and 14. R.S.O. 1960, c. 415, s. 18(2-3).

21. Where any person infected or believed to be infected with venereal disease is a child under the age of sixteen years, all notices, directions or orders required or authorized by this Act or by the regulations to be given in respect of the child shall be given to the father or mother or to the person having the custody of the child for the time being and it is the duty of the father, mother or other person to see that the child complies in every respect with every such notice, order or direction and in default thereof the father, mother or other person, as the case may be, is liable to the penalties provided by this Act, or the regulations for non-compliance with any such notice, direction or order unless on any prosecution in that behalf it is proven to the satisfaction of the court that the father, mother or other person did everything in his power to cause the child to comply therewith. R.S.O. 1960, c. 415, s. 21.

General offence section: s. 12(1) (a) (f)

VITAL STATISTICS ACT R.S.O. 1970, Chap. 483, ss. 3(4), 11(5), 12(2), 24(2), 43, 48, 52, 54(j)

3. (4) The Registrar General may collate, publish and distribute such statistical information regarding the births, marriages, deaths, still-births, adoptions, divorces and changes of names registered during any period as he may consider to be necessary and in the public interest. R.S.O. 1960, c. 419, s. 3(4).

11. (5) If, subsequent to the registration, the identity of the child is established to the satisfaction of the Registrar General, he may by order set aside the registration made pursuant to this section and cause the substitution of a new registration of the birth in accordance with the actual facts of the birth, and cause the original registration to be withdrawn from the registration files and kept in a separate file and sealed.

12. (2) Where the birth of the child has been registered before the marriage, the original registration shall be withdrawn from the registration files and shall be kept in a separate file and sealed. R.S.O. 1960, c. 419, s. 12(2).

24. (2) If the birth of the person adopted,
- (a) was registered in Ontario before the adoption; or
 - (b) is registered in Ontario after the adoption in accordance with this Act,

the Registrar General, upon production of evidence satisfactory to him of the identity of the person together with an application for the registration of the birth in the prescribed form, may by order set aside any registration made pursuant to section 9, 10, 11 or 12 or to this section and cause the substitution of a new registration of the birth in accordance with the facts contained in the adoption order, judgement or decree as if the adopted person had on the date and in the place of birth recorded in the original registration been born in lawful wedlock to the adopting parent, and cause the original registration to be withdrawn from the registration files and kept in a separate file and sealed, but in every such case, whether or not such an application is made, the Registrar General shall cause a notation of the adoption and of any change of name consequent thereon with a reference to the registration of the order to be made upon the original registration of the birth of the person, and shall cause a reference to the original registration of the birth to be endorsed on the copy of the order, judgement or decree.

R.S.O. 1960, c. 419, s. 25(2); 1964, c. 123, s. 1.

43. (1) Any person who,
- (a) applies;
 - (b) pays the prescribed fee; and
 - (c) satisfies the Registrar General as to his reason for requiring it

may have search made for the registration of any birth, death, marriage, still-birth, divorce, adoption or change of name in the indexes kept in the office of the Registrar General.

- (2) Any person who,
- (a) applies;
 - (b) pays the prescribed fee; and

- (c) satisfies the Registrar General as to his reason for requiring it,

may have search made for any birth, marriage, baptism or death in any record kept in the office of the Registrar General pursuant to section 29.

(3) The only information given upon a search under subsection 1 or 2 shall be as to the existence or otherwise of the registration, and the registration number if registered. R.S.O. 1960, c. 419, s. 45.

48. (1) No division registrar, sub-registrar, funeral director or person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any records containing information obtained under this Act. R.S.O. 1960, c. 419, s. 50; 1965, c. 140, s. 7.

(2) Nothing in subsection 1 prohibits the furnishing and publication of information of a general statistical nature that does not disclose information about any individual person. 1970, c. 87, s. 5.

52. Any person contravening any of the provisions of section 48 is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. R.S.O. 1960, c. 419, s. 53.

54. The Lieutenant Governor in Council may make regulations,

- (j) designating the persons who may have access to or may be given information from the records in the Registrar General's office or in a division registrar's office, and prescribing an oath of secrecy to be taken by such persons; R.S.O. 1960, c. 419, s. 55(j); 1966, c. 158, s. 4(j).

NOTE: ss. 17(5) [as re-enacted by 1973, c. 114, s. 5], 40 concern limitations on issuance of copies of certain documents and are not reproduced here.

General offence section: s. 53 [cf. also s. 52 reproduced above]

WORKMEN'S COMPENSATION ACT R.S.O. 1970, Chap. 505, ss. 81a(1)(2) [as re-enacted by 1973, c. 173, s. 8], 98, 99

81a. (1) No commissioner of the Board, or any other commissioner or an officer or employee of the Board, or a person who is engaged by the Board to conduct an examination, test or inquiry or authorized to perform any function, shall be required to give testimony in any civil suit or proceeding to which the Board is not a party respecting any information, material, statement or result of any examination, test or inquiry acquired, furnished, obtained, made or received in the performance of his duties under this Act.

(2) Neither the Board, a commissioner thereof or any other commissioner, an officer or employee of the Board or a person who is engaged by the Board to conduct an examination, test or inquiry or authorized to perform any function, shall be required to produce in a civil suit to which the Board is not a party a document, extract, report, material or statement acquired, furnished, obtained, made or received in the performance of his duties under this Act.

98. (1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or that has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

(2) Every person who contravenes any of the provisions of subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than \$50. R.S.O. 1960, c. 437, s. 97.

99. Every report made under section 52 and every other report made or submitted to the Board by a physician, surgeon, hospital, nurse, dentist, drugless practitioner, chiropodist or optometrist is for the use and purposes of the Board only, is deemed to be a privileged communication of the person making or submitting the same, and unless it is proved that it was made maliciously, is not admissible as evidence or subject to production in any court in an action or proceeding against such person.

1968-69, c. 140, s. 2.

ADDENDUM TO APPENDIX A

The following changes and additions have been made to relevant Ontario statutes since this compilation was first made in the summer of 1977:

Child Welfare Act, R.S.O. 1970, c. 64 repealed and replaced by Child Welfare Act, 1978, S.O. 1978, c. 85, proclaimed in force June 15, 1979, including the following sections:

*50.—(1) Subject to the provisions of subsection 4 with respect to section 26a of *The Mental Health Act* and notwithstanding the provisions of any other Act, where the applicant satisfies the court,

Access to
records, etc.
R.S.O. 1970,
c. 269

- (a) that there are reasonable and probable grounds to believe that there are records, writings or documents at any place that are relevant to an investigation to determine whether abuse has been or is likely to be inflicted on a child; and
- (b) that a request by a Director, a local director of a society or a person authorized by the Director or by the local director to inspect such records, writings or documents has been refused by the custodian of the records, writings or documents,

the court upon application by the Director or the society, as the case may be, and upon notice of the application being given to the custodian of the records, writings or documents, may, subject to subsection 2, make an order for the production by the custodian thereof of any of the records, writings or documents or any part or parts thereof that the court considers are relevant to an investigation to determine whether the abuse has been or is likely to be inflicted on the child, to the Director or the local director or person authorized by the Director or the local director, as the case may be, and the Director, local director or the person may inspect and extract information from such records, writings or documents or part or parts thereof that are designated in the order and reproduce such copies therefrom as the Director, local director or the person, as the case may be, considers necessary.

Non-
disclosure
of records,
etc.

(2) The records, writings or documents or any part or parts thereof that are produced or disclosed to the court in the course of a hearing held to determine whether an order should be made under subsection 1 for the production of the records, writings or documents or any part or parts thereof, shall not be disclosed to any person except pursuant to and in accordance with any order made following the hearing under subsection 1.

Idem

(3) No person who obtains information pursuant to an order made under subsection 1 shall disclose or transmit or permit the disclosure or transmission of the information except for the purpose of the investigation to determine whether the child is in need of protection or for giving evidence in proceedings under this Part.

52.—(1) In this section,

Interpre-
tation

- (a) "Director" means an employee of the Ministry appointed by the Minister for the purposes of this section;
- (b) "registered person" means a person named in or otherwise identifiable from the register established under subsection 3, but does not include the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 who are not themselves the subject of the report.

(2) Every society that receives information under section 49 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form, and no action or other proceeding for damages shall be instituted against any officer or employee of a society for any act done in good faith in the execution or intended execution of any duty imposed on the society under this subsection or for any alleged neglect or default in good faith of such duty.

Society
to report
information
concerning
abuse

(3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 49 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 unless such person or persons are themselves the subject of the report.

Register

(4) Subject to subsections 5 to 10 and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection 3.

Information
confidential

(5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under *The Coroners Act, 1972* and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection 3 and may disclose or transmit

Exceptions
1972, c. 98

that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of section 51.

Idem

(6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection 5 or to any other person referred to in this subsection:

1. A person who is on the staff of,
 - i. the Ministry,
 - ii. a society, or
 - iii. a child protection agency recognized by a jurisdiction outside Ontario.
2. A person who is or may be providing services or treatment to a registered person.

Idem

(7) A person who has the written approval of the Director and who is engaged in *bona fide* research may inspect the information referred to in subsection 4 but shall not use or communicate the information for a purpose other than research, academic pursuits or the compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

Idem

(8) A registered person or the registered person's agent may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

Idem

(9) A legally qualified medical practitioner who is approved by the Director may inspect information referred to in subsection 4 that is approved by the Director.

Idem

(10) The Director or a person approved by the Director who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

Register
inadmissible

(11) The register established under subsection 3 is inadmissible in evidence for any purpose in any proceedings, except,

- (a) to prove compliance or non-compliance with any of the provisions of this section;
- (b) in an appeal made under subsection 19;

(c) in proceedings under *The Coroners Act, 1972*; or 1972, c. 98

(d) in proceedings referred to in section 51.

Record of
proceedings
at hearing
inadmissible

(21) The record of proceedings in any hearing held under subsection 14 or in any appeal under subsections 19 and 20 is inadmissible in evidence in any other proceeding for any purpose except proceedings under clause c and subclause iv of clause f of subsection 1 of section 94. *New.*

80.—(1) Subject to subsection 6 of section 81, the documents used upon an application for an adoption order shall be sealed up and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director. Papers to be sealed up

(2) Within thirty days after the making of an adoption order, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit, Transmission of order

(a) the original order to the adopting parent;

(b) one certified copy to a Director;

(c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and

(d) where the adopted child is a member of a band within the meaning of the *Indian Act* (Canada), one certified copy to the Registrar under that Act. R.S.C. 1970, c. I-6
R.S.O. 1970, c. 64, s. 80, amended.

81.—(1) In this section, "Director" means an employee of the Ministry appointed by the Minister for the purposes of this section. Interpretation

Information
confidential

(4) Notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the voluntary disclosure registry established under subsection 2, except with the written permission of the Director.

Construction Safety Act, 1973, c. 47 and Industrial Safety Act, 1971, c. 43 have been repealed as of October 1, 1979 and replaced by Occupational Health and Safety Act, 1978, c. 83, proclaimed in force October 1, 1979, including the following sections:

Informa-
tion
confidential

34.—(1) Except for the purposes of this Act and the regulations or as required by law,

- (a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations; 1971, c. 43, s. 13 (1); 1973, c. 47, s. 8 (1), *amended*.
- (b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations; *New*.
- (c) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and 1971, c. 43, s. 13 (5); 1973, c. 47, s. 8 (5), *amended*.
- (d) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case. *New*.

(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is not a compellable witness in a civil suit or any proceeding, except an inquest under *The Coroners Act, 1972*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (3); 1973, c. 47, s. 8 (3), *amended*.

Compellability,
civil suit

1972, c. 98

(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (4); 1973, c. 47, s. 8 (4), *amended*.

Power of
Director
to disclose

Penalties

37.—(1) Every person who contravenes or fails to comply with,

- (a) a provision of this Act or the regulations;
- (b) an order or requirement of an inspector or a Director; or
- (c) an order of the Minister,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than twelve months, or to both.

Defence

(2) On a prosecution for a failure to comply with,

- (a) subsection 1 of section 13;
- (b) clause *b, c or d* of subsection 1 of section 14; or
- (c) subsection 1 of section 16,

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken. R.S.O. 1970, c. 274, s. 625; 1971, c. 43, s. 36; 1973, c. 47, s. 26, *amended*.

Accused
liable for
acts or
neglect of
managers,
agents, etc.

(3) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused. *New*.

Securities Act, R.S.O. 1970, c. 426, repealed and replaced by Securities Act, 1978, c. 47, proclaimed in force September 15, 1979, including the following sections:

Evidence not
to be disclosed

14. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 11 or 13.

Prospectus
not
required

71.—(1) Subject to the regulations, sections 52 and 61 do not apply to a distribution where,

(a) the purchaser is,

(iv) Her Majesty in right of Canada or any province or territory of Canada, or

(v) any municipal corporation or public board or commission in Canada,

who purchases as principal;

137.—(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection 2, be made available by the Commission for public inspection during the normal business hours of the Commission. ^{Filing and inspection of material}

(2) Notwithstanding subsection 1, the Commission may ^{Idem} hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection. *New.*

Ministry of Treasury, Economics and Intergovernmental Affairs Act, 1972, c. 3, repealed and superseded by Ministry of Treasury and Economics Act, 1978, c. 62, in force August 16, 1978, including the following section:

15. Every person who is to examine the accounts or inquire into the affairs of any ministry pursuant to this Act shall be required to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by, persons employed in that ministry. 1972, c. 3, s. 15. ^{Oath of secrecy}

Pyramidic Sales Act, 1972, c. 57 has been repealed by S.O. 1978, c. 105, s. 1.

Gift Tax Act, 1972, c. 12 has been repealed by S.O. 1979, c. 21.

Succession Duty Act, R.S.O. 1970, c. 449 has been repealed by S.O. 1979, c. 20.

Mining Tax Act, 1972, c. 140 amended and the following section added by S.O. 1978, c. 82, s. 6:

11a.—(1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any such person to inspect or have access to any written statement furnished under this Act. Confidentiality

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. Penalty

(3) Notwithstanding subsection 1, the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the Government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. Agreements to exchange information

Highway Traffic Act, R.S.O. 1970, c. 202 amended and the following section added by S.O. 1977, c. 54, s. 1:

13.—

(7) Documents filed with the Ministry relating to mental and physical, including ophthalmic and auditory, examinations pursuant to this section are privileged for the information of the Ministry only and shall not be open for public inspection. Documents privileged

Mental Health Act, R.S.O. 1970, c. 269 amended and following sections enacted by S.O. 1978, c. 50, s. 10:

Interpretation

26a.—(1) In this section,

- (a) "clinical record" means the clinical record compiled in a psychiatric facility in respect of a patient, and includes a part of a clinical record;
- (b) "patient" includes former patient, out-patient, and former out-patient.

Disclosure
of clinical
record

(2) Except as provided in subsections 3 and 5, no person shall disclose, transmit or examine a clinical record.

Idem

(3) The officer in charge and the attending physician in the psychiatric facility in which a clinical record was prepared may examine the clinical record and the officer in charge may disclose or transmit the clinical record to or permit the examination of the clinical record by,

- (a) where the patient has attained the age of majority and is mentally competent, any person with the consent of the patient;
- (b) where the patient has not attained the age of majority or is not mentally competent, any person with the consent of the nearest relative of the patient;
- (c) any person employed in or on the staff of the psychiatric facility for the purpose of assessing or treating or assisting in assessing or treating the patient;
- (d) the chief executive officer of a health facility that is currently involved in the direct health care of the patient upon the written request of the chief executive officer to the officer in charge;
- (e) with the consent of the patient or, where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient or, where delay in obtaining the consent of either of them would endanger the life, a limb or a vital organ of the patient, without the consent of either of them, a person currently involved in the direct health care of the patient in a health facility;
- (f) a person for the purpose of research, academic pursuits or the compilation of statistical data.

(4) Where a clinical record,

Use of
material
in clinical
record for
research,
study or
statistics

- (a) is transmitted or copied for use outside the psychiatric facility for the purpose of research, academic pursuits or the compilation of statistical data, the officer in charge shall remove from the part of the clinical record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient; and
- (b) is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the clinical record for a purpose other than research, academic pursuits or the compilation of statistical data.

Disclosure
pursuant to
subpoena

(5) Subject to subsections 6 and 7, the officer in charge or a person designated in writing by the officer in charge shall disclose, transmit or permit the examination of a clinical record pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act.

Statement
by attending
physician

(6) Where the disclosure, transmittal or examination of a clinical record is required by a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act and the attending physician states in writing that he is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record,

(a) is likely to result in harm to the treatment or recovery of the patient; or

(b) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

no person shall comply with the requirement with respect to the clinical record or the part of the clinical record specified by the attending physician except under an order of,

(c) the court before which the matter is or may be in issue; or

(d) where the disclosure, transmittal or examination is not required by a court, under an order of the Divisional Court,

made after a hearing from which the public is excluded and that is held on notice to the attending physician.

Matters
to be
considered by
court or body

(7) On a hearing under subsection 6, the court or body shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending physician

(a) is likely to result in harm to the treatment or recovery of the patient; or

(b) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

and for the purpose the court or body may examine the clinical record, and, if satisfied that such a result is likely, the court or body shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

(8) Where a clinical record is required pursuant to subsection 5 or 6, the clerk of the court or body in which the clinical record is admitted in evidence or, if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the officer in charge forthwith after the determination of the matter in issue in respect of which the clinical record was required.

Return of
clinical
record to
officer in
charge

(9) No person shall disclose in an action or proceeding in any court or before any body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of his employment in the psychiatric facility except,

Disclosure
in action or
proceeding

- (a) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;
- (b) where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient; or
- (c) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or (where the patient has not attained the age of majority or is not mentally competent) the nearest relative of the patient, that the disclosure is essential in the interests of justice.

New statutes were enacted containing the following:

Venture Investment Corporations Registration Act, 1977, c. 10, proclaimed in force January 1, 1978, repealed 1979, c. 22, to come into force on proclamation:

24.—

Non-
disclosure of
information

1972, c. 143

(3) The Minister or any employee of the Ministry shall not disclose information contained in a file or return under this section, or section 21, except where the disclosure is necessary for the administration or enforcement of this Act or *The Corporations Tax Act, 1972*, or where the disclosure is required by a court or the Tribunal for the purposes of an action, prosecution or proceeding.

26.—(1) The Minister may at any time by notice require any venture investment corporation to file within the time specified in the notice a return upon any subject connected with its affairs and relevant to the administration or enforcement of this Act.

Information
required
by the
Minister

(2) The Minister or any employee of the Ministry shall not disclose information contained in a return made under subsection 1, except where the disclosure is necessary for the administration or enforcement of this Act or *The Corporations Tax Act, 1972*, or where the disclosure is required by a court or the Tribunal for the purposes of an action, prosecution or proceeding.

Idem.
disclosure of

Ontario Youth Employment Act, 1977, c. 12:

7.—

Non-
disclosure

(4) No person employed in the administration or enforcement of this Act shall disclose information obtained under section 6 or this section, except where the disclosure is necessary for the administration or enforcement of this Act or where the disclosure is required by a court for the purposes of an action, prosecution or proceeding.

Audit Act, 1977, c. 61:

19. Audit working papers of the Office of the Auditor shall not be laid before the Assembly or any committee of the Assembly. *New.*

Audit
working
papers

Oath of
office and
secrecy and
oath of
allegiance

21.—(1) Every employee of the Office of the Auditor, before performing any duty as an employee of the Auditor, shall take and subscribe before the Auditor or a person designated in writing by the Auditor,

(a) the following oath of office and secrecy:

I,, do swear (or solemnly affirm) that I will faithfully discharge my duties as an employee of the Provincial Auditor and will observe and comply with the laws of Canada and Ontario and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Auditor.

So help me God. (Omit this line in an affirmation)

(b) the following oath of allegiance:

I,, do swear (or solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), her heirs and successors according to law.

So help me God. (Omit this line in an affirmation)

Idem

(2) The Auditor may require any person or class of persons appointed to assist the Auditor for a limited period of time or in respect of a particular matter to take and subscribe either or both of the oaths set out in subsection 1.

Record
of oaths

(3) A copy of each oath administered to an employee of the Office of the Auditor under subsection 1 shall be kept in the file of the employee in the Office of the Auditor.

Cause for
dismissal

(4) The failure of an employee of the Office of the Auditor to take and subscribe or to adhere to either of the oaths required by subsection 1 may be considered as cause for dismissal. *New.*

27.—

(2) The Auditor, the Assistant Auditor and each person employed in the Office of the Auditor or appointed to assist the Auditor for a limited period of time or in respect of a particular matter shall preserve secrecy with respect to all matters that come to his knowledge in the course of his employment or duties under this Act and shall not communicate any such matters to any person, except as may be required in connection with the administration of this Act or any proceedings under this Act or under the *Criminal Code* (Canada).

Information
confidential

R.S.C. 1970,
c. C-34

Ministry of Correctional Services Act, 1978, c. 37:

Confiden-
tiality

10. Every person employed in the administration of this Act, including any person making an inspection, investigation or inquiry under this Act, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inspection, investigation or inquiry and shall not communicate any such matters to any other person except,

R.S.C. 1970,
cc. P-2, P-6,
P-21, C-34

- (a) as may be required in connection with the administration of this Act, the *Parole Act* (Canada), the *Penitentiary Act* (Canada), the *Prisons and Reformatories Act* (Canada) or the *Criminal Code* (Canada) or the regulations thereunder;
- (b) to the Ombudsman of Ontario or Correctional Investigator of Canada;
- (c) in statistical form if the person's name or identity is not revealed therein;
- (d) with the approval of the Minister. *New.*

Commodity Futures Act, 1978, c. 48, proclaimed in force September 1, 1979:

Evidence not
to be dis-
closed

10. No person, without the consent of the Commission, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 7 or 9.

55.—(1) Every person or company that,

Offences,
general

- (a) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or to any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
- (b) makes a statement in any application, release, report, return, financial statement, or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
- (c) otherwise contravenes this Act or the regulations; or

- (d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a company or a person other than an individual, to a fine of not more than \$25,000 and, in the case of an individual, to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors and officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000, or to imprisonment for a term of not more than one year.

63.—(1) Where this Act or the regulations require that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection 2, be made available by the Commission for public inspection during the normal business hours of the Commission.

Material
available for
inspection

(2) Notwithstanding subsection 1, the Commission may hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection.

Idem

Discriminatory Business Practices Act, 1978, c. 60:

13. Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 8, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Act or any proceeding under or pursuant to this Act;
- (b) to his counsel or to the court in any proceeding under or pursuant to this Act;
- (c) to inform the person involved of a discriminatory business practice and of any information relevant to the person's rights under this Act; or
- (d) with the consent of the person to whom the information relates.

APPENDIX B

SECRECY PROVISIONS - STANDARD FORM

Ambulance Act, R.S.O. 1970, c. 20, s. 18(3)
Bailiffs Act, R.S.O. 1970, c. 38, s. 14a
Business Practices Act, 1974, S.O. 1974, c. 131, s. 14(1)
Collection Agencies Act, R.S.O. 1970, c. 71, s. 26b(1)
Consumer Protection Act, R.S.O. 1970, c. 82, s. 29a(1)
Consumer Reporting Act, 1973, S.O. 1973, c. 97, s. 18(1)
Denture Therapists Act, 1974, S.O. 1974, c. 34, s. 22(1)
Deposits Regulation Act, R.S.O. 1970, c. 127, s. 5a
Education Act, 1974, S.O. 1974, c. 109, s. 231(10), 1972, c. 77
Environmental Assessment Act, 1975, S.O. 1975, c. 69, s. 28(1)
Environmental Protection Act, 1971, S.O. 1971, vol. 2, c. 86, s. 87(1)
Funeral Services Act, 1976, S.O. 1976, c. 83, s. 32(1)
Health Disciplines Act, 1974, S.O. 1974, c. 47, ss. 41(1), 65(1), 111(1), 137(1)
Liquor License Act, 1975, S.O. 1975, c. 40, s. 25(1)
Mortgage Brokers Act, R.S.O. 1970, c. 278, s. 25b(1)
Paperback and Periodical Distributors Act, 1971, S.O. 1971, vol. 2, c. 82, s. 12(1)
Pesticides Act, 1973, S.O. 1973, c. 25, s. 19
Public Commercial Vehicles Act, R.S.O. 1970, c. 375, s. 15d(1)
Public Trustee Act, R.S.O. 1970, c. 389, s. 18
Public Vehicles Act, R.S.O. 1970, c. 392, s. 22b
Pyramidal Sales Act, 1972, S.O. 1972, c. 57, s. 19(1)
Real Estate and Business Brokers Act, R.S.O. 1970, c. 401, s. 27b(1)
Travel Industry Act, 1974, S.O. 1974, c. 115, s. 21(1)
Upholstered and Stuffed Articles Act, R.S.O. 1970, c. 474, s. 9a
Motor Vehicle Dealers Act, R.S.O. 1970, c. 475, s. 25b(1)

APPENDIX C

STATUTORY RESTRICTIONS ON ACCESS TO FINANCIAL STATEMENTS

Collection Agencies Act, R.S.O. 1970, c. 71, s. 30
Consumer Protection Act, R.S.O. 1970, c. 82, s. 26
Co-operative Corporations Act, 1973, S.O. 1973, c. 101, s. 142
Corporations Information Act, 1976, S.O. 1976, c. 66, s. 8
Corporations Tax Act, 1972, S.O. 1972, c. 143, s. 166
Gasoline Tax Act, 1973, S.O. 1973, c. 99, s. 30
Gift Tax Act, 1972, S.O. 1972, c. 12, s. 52
Income Tax Act, R.S.O. 1970, c. 217, s. 44
Land Speculation Tax Act, 1974, S.O. 1974, c. 17, s. 18
Mining Tax Act, 1972, S.O. 1972, c. 140, s. 11
Mortgage Brokers Act, R.S.O. 1970, c. 278, s. 27
Motor Vehicle Fuel Tax Act, R.S.O. 1970, c. 282, s. 19
North Pickering Development Corporation Act, 1974, S.O. 1974, c. 124, s. 6
Ontario Land Corporation Act, 1974, S.O. 1974, c. 134, s. 6
Public Commercial Vehicles Act, R.S.O. 1970, c. 375, s. 15d
Race Tracks Tax Act, R.S.O. 1970, c. 397, s. 12
Real Estate and Business Brokers Act, R.S.O. 1970, c. 401, s. 32
Retail Sales Tax Act, R.S.O. 1970, c. 415, s. 14
Tobacco Tax Act, R.S.O. 1970, c. 463, s. 12
Travel Industry Act, 1974, S.O. 1974, c. 115, s. 16
Motor Vehicle Dealers Act, R.S.O. 1970, c. 475, s. 29

APPENDIX D

STATUTORY RESTRICTIONS ON ACCESS TO MEDICAL INFORMATION

Cancer Act, R.S.O. 1970, c. 55, s. 6a

Health Insurance Act, 1972, S.O. 1972, c. 91, s. 44

Human Tissue Gift Act, 1971, S.O. 1971, vol. 2, c. 83, s. 11

Private Sanitaria Act, R.S.O. 1970, c. 363, ss. 3, 42

Venereal Diseases Prevention Act, R.S.O. 1970, c. 479, ss. 13, 15, 18

Vital Statistics Act, R.S.O. 1970, c. 483, ss. 11, 48

Workmen's Compensation Act, R.S.O. 1970, c. 505, s. 99

APPENDIX E

STATUTORY RESTRICTIONS ON ACCESS TO TEST RESULTS

Building Code Act, 1974, S.O. 1974, c. 74, s. 22
Cancer Remedies Act, R.S.O. 1970, c. 56, ss. 5, 7
Construction Safety Act, 1973, S.O. 1973, c. 47, s. 8
Energy Act, 1971, S.O. 1971, vol. 2, c. 44, s. 6
Environmental Assessment Act, 1975, S.O. 1975, c. 69, s. 28
Environmental Protection Act, 1971, S.O. 1971, vol. 2, c. 86, s. 87
Industrial Safety Act, 1971, S.O. 1971, vol. 2, c. 43, s. 13
Mining Tax Act, 1972, S.O. 1972, c. 140, s. 11
Pesticides Act, 1973, S.O. 1973, c. 25, s. 19
Petroleum Resources Act, 1971, S.O. 1971, vol. 2, c. 94, s. 5
Workmen's Compensation Act, R.S.O. 1970, c. 505, s. 81a

APPENDIX F

STATUTORY RESTRICTIONS ON ACCESS TO INSPECTION OR INVESTIGATION REPORTS

Ambulance Act, R.S.O. 1970, c. 20, s. 18
Building Code Act, 1974, S.O. 1974, c. 74, s. 22
Business Practices Act, 1974, S.O. 1974, c. 131, s. 14
Collection Agencies Act, R.S.O. 1970, c. 71, s. 26
Construction Safety Act, 1973, S.O. 1973, c. 47, s. 8
Consumer Protection Act, R.S.O. 1970, c. 82, s. 29
Consumer Reporting Act, 1973, S.O. 1973, c. 97, s. 18
Corporations Tax Act, 1972, S.O. 1972, c. 143, s. 166
Denture Therapists Act, 1974, S.O. 1974, c. 34, s. 22
Deposits Regulation Act, R.S.O. 1970, c. 127, s. 5
Employment Standards Act, 1974, S.O. 1974, c. 112, s. 45
Environmental Assessment Act, 1975, S.O. 1975, c. 69, s. 28
Environmental Protection Act, 1971, S.O. 1971, vol. 2, c. 86, s. 87
Funeral Services Act, 1976, S.O. 1976, c. 83, s. 32
Health Disciplines Act, 1974, S.O. 1974, c. 47, ss. 41, 65, 111, 137
Industrial Safety Act, 1971, S.O. 1971, vol. 2, c. 43, s. 13
Liquor License Act, 1975, S.O. 1975, c. 40, s. 25
Paperback and Periodical Distributors Act, 1971, S.O. 1971, vol. 2, c. 82, s. 12
Petroleum Resources Act, 1971, S.O. 1971, vol. 2, c. 94, s. 5
Private Investigators and Security Guards Act, R.S.O. 1970, c. 362, s. 18
Public Commercial Vehicles Act, R.S.O. 1970, c. 375, s. 15
Public Vehicles Act, R.S.O. 1970, c. 392, s. 22b
Pyramidal Sales Act, 1972, S.O. 1972, c. 57, s. 19
Real Estate and Business Brokers Act, R.S.O. 1970, c. 401, s. 27
Securities Act, R.S.O. 1970, c. 426, s. 25
Travel Industry Act, 1974, S.O. 1974, c. 115, s. 21
Upholstered and Stuffed Articles Act, R.S.O. 1970, c. 474, s. 9
Motor Vehicle Dealers Act, R.S.O. 1970, c. 475, s. 25
Workmen's Compensation Act, R.S.O. 1970, c. 505, s. 98

APPENDIX G

SECRECY PROVISIONS - TAXING STATUTES

Corporations Tax Act, 1972, S.O. 1972, c. 143, s. 166(1), (2), (3)
Gasoline Tax Act, 1973, S.O. 1973, c. 99, s. 30
Gift Tax Act, 1972, S.O. 1972, c. 12, ss. 52, 54(1) (b)
Income Tax Act, R.S.O. 1970, c. 217, ss. 44(1), (2), 48(1), (3), (4) (a)
Land Speculation Tax Act, 1974, S.O. 1974, c. 17, s. 18
Mining Tax Act, 1972, S.O. 1972, c. 140, s. 11(1)
Motor Vehicle Fuel Tax Act, R.S.O. 1970, c. 282, s. 19
Race Tracks Tax Act, R.S.O. 1970, c. 397, s. 12(1), (2)
Retail Sales Tax Act, R.S.O. 1970, c. 415, s. 14(1), (2)
Succession Duty Act, R.S.O. 1970, c. 449, s. 43
Tobacco Tax Act, R.S.O. 1970, c. 463, s. 12(1), (2)

APPENDIX H

SECRECY PROVISIONS - COLLECTIVE BARGAINING STATUTES

Colleges Collective Bargaining Act, 1975, S.O. 1975, c. 74

Crown Employees Collective Bargaining Act, 1972, S.O. 1972, c. 67

Labour Relations Act, R.S.O. 1970, c. 232

School Boards and Teachers Collective Negotiations Act, 1975, S.O. 1975, c. 72

APPENDIX I

SECRECY PROVISIONS - GOVERNMENT OFFICIALS NOT COMPELLABLE
TO TESTIFY IN COURT PROCEEDINGS

Building Code Act, 1974, S.O. 1974, c. 74, s. 22(3)
Business Practices Act, 1974, S.O. 1974, c. 131, s. 14(2)
Collection Agencies Act, R.S.O. 1970, c. 71, s. 26b(2)
Colleges Collective Bargaining Act, 1975, S.O. 1975, c. 74, ss. 58, 93
Construction Safety Act, 1973, S.O. 1973, c. 47, s. 8(3)
Consumer Protection Act, R.S.O. 1970, c. 82, s. 29a(2)
Consumer Reporting Act, 1973, S.O. 1973, c. 97, s. 18(2)
Crown Employees Collective Bargaining Act, 1972, S.O. 1972, c. 67, ss. 47, 49(4), (5)
Denture Therapists Act, 1974, S.O. 1974, c. 34, s. 22(2)
Education Act, 1974, S.O. 1974, c. 109, s. 231(2), (9)
Employment Standards Act, 1974, S.O. 1974, c. 112, s. 45(3), (4)
Energy Act, 1971, S.O. 1971, vol. 2, c. 44, s. 6(2)
Environmental Assessment Act, 1975, S.O. 1975, c. 69, ss. 21, 28(2)
Environmental Protection Act, S.O. 1971, vol. 2, c. 86, s. 87(2)
Funeral Services Act, 1976, S.O. 1976, c. 83, s. 32(2)
Gasoline Tax Act, 1973, S.O. 1973, c. 99, s. 30(2), (3)
Gift Tax Act, 1972, S.O. 1972, c. 12, s. 52(2), (3)
Health Disciplines Act, 1974, S.O. 1974, c. 47, ss. 41(2), 65(2), 111(2), 137(2)
Industrial Safety Act, 1971, S.O. 1971, vol. 2, c. 43, s. 13(3)
Insurance Act, R.S.O. 1970, c. 224, s. 90
Labour Relations Act, R.S.O. 1970, c. 232, ss. 98, 100(4), (5), (6)
Land Speculation Tax Act, 1974, S.O. 1974, c. 17, s. 18(2), (3)
Law Society Act, R.S.O. 1970, c. 238, s. 13(2)
Legal Aid Act, R.S.O. 1970, c. 239, s. 25
Liquor License Act, 1975, S.O. 1975, c. 40, s. 25(2)
Mortgage Brokers Act, R.S.O. 1970, c. 278, s. 25b(2)
Ombudsman Act, 1975, S.O. 1975, c. 42, ss. 20(6), 25(2)
Ontario Energy Board Act, R.S.O. 1970, c. 312, ss. 6(1), 49(3), 56
Ontario Guaranteed Annual Income Act, 1974, S.O. 1974, c. 58, c. 10(3)
Ontario Municipal Board Act, R.S.O. 1970, c. 323, s. 31

Paperback and Periodical Distributors Act, 1971, S.O. 1971, vol. 2, c. 82, s. 12(2)

Petroleum Resources Act, 1971, S.O. 1971, vol. 2, c. 94, s. 5(2)

Pyramidic Sales Act, 1972, S.O. 1972, c. 57, s. 19(2)

Real Estate and Business Brokers Act, R.S.O. 1970, c. 401, s. 27b(2)

Travel Industry Act, 1974, S.O. 1974, c. 115, s. 21(2)

Motor Vehicle Dealers Act, R.S.O. 1970, c. 475, s. 25b(2)

Workmen's Compensation Act, R.S.O. 1970, c. 505, ss. 81a(1), (2), 99

APPENDIX J

ANNUAL REPORT LIST

	<u>Citation</u>	<u>Section</u>
Agricultural Rehabilitation and Development Act	c. 12	s. 7
Agricultural Research Institute Act	c. 14	s. 7
Alcoholism & Drug Addiction Research Fdn. Act	c. 18	s. 17
Algonquin Forestry Authority Act, S.O. 1974	c. 99	s. 17
Art Gallery of Ontario Act, S.O. 1972	c. 72	s. 8
Arts Council Act	c. 31	s. 12
Audit Act, S.O. 1977	c. 61	s. 28
Cancer Act	c. 55	s. 12, s. 27
Centennial Centre of Science & Technology Act	c. 58	s. 10
Colleges Collective Bargaining Act, S.O. 1975	c. 74	s. 22(2) (3), s. 57(3)
Community Psychiatric Hospitals Act	c. 74	s. 4(9)
Co-operative Loans Act	c. 86	s. 2(10)
Crop Insurance Act	c. 98	s. 12
Credit Unions and Caisses Populaires Act, S.O. 1976	c. 62	s. 99(1)
Denture Therapists Act, S.O. 1974	c. 34	s. 13(1)
Development Corporations Act, S.O. 1973	c. 84	s. 25
Education Act, S.O. 1974	c. 109	s. 3
Election Finances Reform Act, S.O. 1975	c. 12	s. 4(2)
Farm Income Stabilization Act, S.O. 1976	c. 77	s. 15
Farm Products Payments Act	c. 163	s. 6
Fisheries Loans Act	c. 175	s. 2
Funeral Services Act, S.O. 1976	c. 83	s. 2(8), s. 16(1)
Health Disciplines Act, S.O. 1974	c. 47	s. 7(1) (b)
Health Insurance Act, S.O. 1972	c. 91	s. 8
Junior Farmer Establishment Act	c. 229	s. 8, s. 9
Law Society Act	c. 238	s. 54(3) (b), s. 51a(6)
Legal Aid Act	c. 239	s. 11
Liquor Control Act, S.O. 1975	c. 27	s. 7
McMichael Canadian Collection Act, S.O. 1972	c. 134	s. 16
Ministry of Agriculture and Food Act	c. 109	s. 8

	<u>Citation</u>	<u>Section</u>
Ministry of Attorney General Act	c. 116	s. 7
Ministry of Culture and Recreation Act	c. 120	s. 10
Ministry of Energy Act, S.O. 1973	c. 56	s. 11
Ministry of Government Services Act, S.O. 1973	c. 2	s. 15
Ministry of Health Act	c. 114	s. 9
Ministry of Housing Act, S.O. 1973	c. 100	s. 10
Ministry of Labour Act	c. 117	s. 7
Ministry of Natural Resources Act, S.O. 1972	c. 4	s. 11
Ministry of Solicitor General Act, S.O. 1972	c. 2	s. 6
Ministry of Transportation & Communications Act, S.O. 1971, Vol.1	c. 13	s. 10
Ministry of Treasury, Economics & Intergovernmental Affairs Act, S.O. 1972	c. 3	s. 13
Municipal Act	c. 284	s. 217(3), s. 223(3), s. 224(1) s. 308(5) s. 352(73) (i) s. 361(13)
Niagara Parks Act	c. 298	s. 19
North Pickering Development Corporation Act, S.O. 1974	c. 124	s. 30(1)
Ombudsman Act, S.O. 1975	c. 42	s. 12
Ontario Agricultural Museum Act, S.O. 1975	c. 58	s. 12
Ontario Deposit Insurance Corporation Act	c. 307	s. 10
Ontario Education Capital Aid Corporation Act	c. 310	s. 11
Ontario Educational Communications Authority Act	c. 311	s. 12
Ontario Energy Board Act	c. 312	s. 9(2)
Ontario Energy Corporation Act, S.O. 1974	c. 101	s. 22(2)
Ontario Food Terminal Act	c. 313	s. 9
Ontario Heritage Act, S.O. 1974	c. 122	s. 21(1)
Ontario Highway Transport Board Act	c. 316	s. 24(3), s. 28
Ontario Housing Corporation Act	c. 317	s. 13
Ontario Institute for Studies in Education Act	c. 319	s. 11
Ontario Labour Management Arbitration Commission Act	c. 310	s. 7
Ontario Land Corporation Act, S.O. 1974	c. 134	s. 28(1)
Ontario Lottery Corporation Act, S.O. 1974	c. 126	s. 12(1)

	<u>Citation</u>	<u>Section</u>
Ontario Mental Health Foundation Act	c. 322	s. 13, s. 26
Ontario Municipal Board Act	c. 323	s. 100
Ontario Municipal Employees Retirement System Act	c. 324	s. 3(6)
Ontario Municipal Improvement Corporation Act	c. 325	s. 12
Ontario New Home Warranties Plan Act, S.O. 1976	c. 52	s. 5
Ontario Northland Transportation Commission Act	c. 326	s. 41
Ontario Food Council Act	c. 328	s. 9
Ontario Place Corporation Act, S.O. 1972	c. 33	s. 14(1)
Ontario Telephone Development Corporation Act	c. 330	s. 11
Ontario Universities Capital Aid Corporation Act	c. 331	s. 13
Pension Benefits Act	c. 342	s. 13
Police Act	c. 351	s. 40(7), s. 44
Power Corporation Act	c. 354	s. 10
Public Service Act	c. 386	s. 4(g)
Public Service Superannuation Act	c. 387	s. 35
Public Trustee Act amended 1971	c. 50	s. 73(3)
Registry Amendment Act, S.O. 1972	c. 133	s. 36(2)
Research Foundation Amendment Act, 1960-61	c. 89	s. 20
School Boards & Teachers Collective Negotiations Act, S.O. 1975	c. 72	s. 61(3)
Sheridan Park Corporation Act	c. 433	s. 14
St. Lawrence Parks Commission Act	c. 447	s. 17(2)
Stock Yards Act	c. 448	s. 8
Superannuation Adjustment Benefits Act, S.O. 1975	c. 82	s. 10(5)
Teacher's Superannuation Act	c. 455	s. 13(2)
Telephone Act	c. 457	s. 24
Toronto Area Transit Operating Authority Act, S.O. 1974	c. 69	s. 14(2)
University of Toronto Act, S.O. 1971, Vol. 1	c. 56	s. 1(19), s. 19(2)
Vital Statistics Act	c. 483	s. 3(5)
Wilfrid Laurier University Act, S.O. 1973	c. 87	s. 33(2) (3)
Workmen's Compensation Act	c. 505	s. 31c(2)

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Research Publication 1

by Prof. Donald V. Smiley, York University

Freedom of Information and Ministerial Responsibility
Research Publication 2

by Prof. Kenneth Kernaghan, Brock University

Public Access to Government Documents: A Comparative Perspective
Research Publication 3

by Prof. Donald C. Rowat, Carleton University

Information Access and the Workmen's Compensation Board
Research Publication 4

by Prof. Terence Ison, Queen's University

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